REPORTER'S RECORD

VOLUME 52 OF 57 VOLUMES

TRIAL COURT CAUSE NO. F09-59380-S

CASE NO. AP-76,458

THE STATE OF TEXAS	:	IN THE 282ND JUDICIAL
VS.	:	DISTRICT COURT OF
GARY GREEN	:	DALLAS COUNTY, TEXAS

PUNISHMENT PHASE BY JURY

****

On the 4th day of November, 2010, the following proceedings came on to be heard in the above-entitled and numbered cause before the Honorable Andy Chatham, Judge Presiding, held in Dallas, Dallas County, Texas:

Proceedings reported by machine shorthand computer assisted transcription.

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PROCEEDINGS

THE COURT: Everybody ready?

MR. BEACH: Yes.

MR. JOHNSON: Yes, Judge.

(Discussion off the record.)

THE COURT: No. Bring them in. We'll take them after you're done.

MR. JOHNSON: Okay.

THE COURT: Yeah, bring them in.

THE BAILIFF: All rise.

(Jury returned to courtroom.)

THE COURT: Thank you all. Please be seated. Please call your next witness.

MR. JOHNSON: Call Dr. Gilbert Martinez.

THE COURT: Doctor, if you would.

(Witness brought forward and sworn.)

THE COURT: Please have a seat.

THE WITNESS: Thank you.

GILBERT MARTINEZ,

was called as a witness by the Defendant, and after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Would you state your name, please.

A. My name is Dr. Gilbert Martinez.

Q. Dr. Martinez, where do you live?

A. I live in the community of Boerne outside of San Antonio, Texas.

Q. Okay. And, sir, how old a man are you?

A. Forty-five years old.

Q. How are you employed?

A. I am the director and owner of South Texas Neuropsychological Associates. It's a practice that provides neuropsychological and psychological services in the San Antonio area and South Texas.

Q. Okay. And could you tell the jury about your education and your background and training that enables you to hold that position?

A. Yes, I have a Bachelor's degree in Psychology and Zoology from the University of Texas at Austin. I have a Master's and a Ph.D. in Clinical Neuropsychology from the University of Houston. I'm a licensed psychologist in the State of Texas, and I have extensive training and experience in evaluating and treating all different types of cognitive, mental, and behavioral disorders. I -- in addition to my private practice, I also have a contract with the Veterans Administration and regularly evaluate veterans and -- and enlisted soldiers. I am also a -- an oral examiner with the state board where I evaluate individuals that are seeking licensure as psychologists in the State of Texas. I am a staff

neuropsychologist with two hospital systems in San Antonio, including the Health South Hospital System and the Nix Health Care System. And we routinely conduct about -- anywhere from 400 to 600 psychological assessments during -- per year in my practice.

Q. When you say that you've performed these clinical assessments, can you give the jury a little bit of an idea what it is that you actually do?

A. Yes. I'm a clinical neuropsychologist, so I'm commonly asked to evaluate a person's mental functioning. Many times these are people that suffer from neurological conditions, like head injuries or strokes or things like that, or they suffer from emotional problems like depression or bipolar disorder. And -- and I am a consultant where I -- when a patient is referred to us, we administer a broad range of psychological and neuropsychological tests. These are standardized tests that are designed to tell us at what level a person is functioning and what kinds of emotional and cognitive and mental problems they might be having.

Q. What is the -- when -- you use the term "psychological," as well as "neuropsychological." Could you tell the jury what the distinction is that you draw between the two?

A. Yes. Psychological is a more general term that refers to a lot of different aspects of a person's mental and

emotional functioning and behavioral functioning. Whereas neuropsychological refers more specifically to evaluating brain behavior relationships, relationships between what's going on with the person emotionally and behaviorally as it relates to their brain function. A clinical neuropsychologist typically will have all the training of a clinical psychologist and they have to be licensed in the same way as clinical -- as a psychologist with the State of Texas, but then they also have extra training and experience in working with brain-related disorders, as well.

Q. And is one of the aspects of your practice, is that also consulting and -- with both -- both prosecutors and defense attorneys in regards to performing analysis and diagnoses on individuals?

A. Yes.

Q. Okay. And when you are called upon by either the prosecutor or a -- or a defense attorney to do this, what kind of methodologies do you use to perform these analyses?

A. We -- we administer standardized psychological and neuropsychological tests. These are tests that are designed to evaluate a person's memory, their verbal memory, their visual memory, tests that are designed to evaluate a person's intelligence level. We give tests that look at verbal intelligence and non-verbal intelligence, tests that are designed to evaluate a person's academic achievement, where

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they fall academically in respect to -- with respect to their abilities and -- and make comparisons with that -- with intelligence and -- and other factors. And then we also give standardized tests that are designed to evaluate a person's emotional functioning. We -- we give tests that are designed to evaluate whether a person might suffer from things like depression or schizophrenia or problems with thought or other problems with behavior or personality.

And we use different sources of information. We -- we try to get as much medical history and personal history as we can, both from the patient and then from other medical records that are available. And then we also, of course, use a data gathered from our psychological tests, and then we also form clinical impressions of the patient by spending time with them and interviewing them and looking for certain characteristics that meet symptomatic criteria.

Q. And how important, Doctor, is it to know that individual's -- or get a -- as clear picture as you can in regards to that person's background and social history?

A. We try to get as much social history as we can. The more history that we have for a person, obviously the more accurate our diagnosis is going to be. Oftentimes we don't have as much information as we would like to have, but for the most part, we try to get as much information as we can. The more, the better, so to speak.

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Q. Okay. Could you tell the jury the -- what -- is there any particular testing or tests themselves that you use in doing these neuropsychological exams?

A. Yes. I have a standard neuropsychological test battery. Most neuropsychologists will either have a standard battery that they administer to most or all of their patients or they'll have what's called a flexible battery which means that they'll pick and choose different tests. I lean towards a side of using a standard battery that I give to most of my patients, and then sometimes I add or subject tests based on the referral question. But my standard battery includes tests like the Wechsler Memory Scale that evaluates verbal memory. I give subtests of the Wechsler Memory Scale that evaluate verbal memory.

I give a test called Rey-Osterrieth Complex Figure that evaluates visual memory. I give the Wechsler Adult Intelligence Scale, Fourth Edition. This is a comprehensive test that's sort of like the gold standard. It's the most widely used test for evaluating intelligence -- both verbal and non-verbal intelligence. I do -- I give tests that are considered academic screening tests that look at a person's reading, writing, and arithmetic abilities. And then I also give tests like a test named the Trail Making Test that looks at mental shifting and information processing speed.

We also -- I also use a test called the

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Wisconsin Card Sorting Test which is a commonly used test to look at a person's ability to -- to plan and learn visually and to shift mentally/visually. And all of these tests are designed to basically look at a person's higher level mental functions. In other words, what level are they functioning at with respect to their -- to -- to their cognitive functioning and their intelligence.

And then we also look at -- give tests that are designed to evaluate a person's emotional functioning. I use a personality assessment inventory which is a standardized test that is written, that gives us information about a person's mood and personality and behavior. And I also use other tests sometimes like the sentence completion test, or what I call projective tests where a person draws something or has to look at some pictures.

Q. Doctor, these tests that you described, and I don't know -- I don't think I'm going to ask you to describe them again, but the tests that you've described that you use, are those the standard -- or pretty much the standardized testing that are done in -- by clinical psychologists across -- across the land?

A. Yes. I -- I tend to lean toward using the most commonly used tests. There's a lot of different tests out there, but these tests are some of the most commonly used tests. I think if you polled psychologists and

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neuropsychologists across the country, you would find that these are probably some of the most commonly used tests, and these are -- this is the same test battery that I routinely use in my everyday clinical practice.

Q. And you had mentioned -- you used the term a moment ago as to a "referral question". What are you talking about when you say a referral question?

A. One of the -- one of the primary things that -- that an evaluator, a neuropsychological evaluator has to consider before they see a patient is what is the question that's being asked. And sometimes I'm being -- I get asked to evaluate a person's intellectual functioning, for example, what's their intelligence level. Sometimes I get asked to evaluate a person's neuropsychological functioning, and oftentimes I'm asked to do what's called an independent medical examination which is basically an examination that is independent of a person's history where my job basically is to evaluate the person and give my clinical impressions as to what I think is going on with that person at that time without reference to any other records.

Other times the referral question involves an extensive review of records, and I do that quite a bit, as well, where I don't actually evaluate the individual, but I review records. So there's sort of a broad range of referral questions. Referral questions typically include issues like,

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please let us know what you think about this person's emotional functioning. Do they have a mental disorder? Do they have a cognitive disorder? Do they have an intellectual disorder? And there's different ways of approaching that referral question, but basically that's the first thing that a neuropsychologist has to consider whenever they get a referral.

Q. And, Doctor, in this particular case were you asked to perform an evaluation on an individual that you've come to know as Gary Green?

A. Yes, I was.

Q. And is this Mr. Green sitting here to my right?

A. Yes.

Q. Now, Doctor, in regards to the referral questions that were posed to you in regards to Gary Green, could you tell the jury what it was that you were asked to do and what it was you were asked to look for with -- in regards to Gary Green?

A. Yes. With Mr. Green, I was asked to conduct an evaluation of -- of his cognitive functioning. In other words, I was asked to evaluate his memory, attention, reasoning, and judgment, and to provide opinions regarding his level of cognitive functioning. I was also asked to evaluate his intellectual functioning to determine if he suffered from any type of mental retardation or intellectual deficiency. And then I was also asked to evaluate his emotional functioning. In other words, does he suffer from a mental disorder like

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depression or bipolar disorder or even a thought disorder like schizophrenia. So I was asked to look at basically the clinical aspects of his functioning.

Q. Okay. And were you able to do so?

A. Yes, I was.

Q. Could you tell the jury how it was and what it was that you did with Mr. Green that enabled you to formulate the opinions that you're going to offer here in the courtroom this morning?

A. Yes. I was -- I was provided access to his psychiatric history by way of medical records, so I was provided records regarding some of his previous psychological and psychiatric evaluations and treatment. And then I traveled from San Antonio here to the jail, and I spent the better part of a day with Mr. Green. I interviewed him for about two hours, and then I administered -- I personally myself administered a battery of these psychological and neuropsychological tests that I -- that I just mentioned which took another five or six hours or so.

Q. Okay. And in -- is this -- as you've talked about earlier, is this pretty much the standard neuropsychological diagnoses and testing that is appropriate for this type of referral questions?

A. Yes, it is.

Q. Other than -- other than talking and reviewing

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the -- his medical records -- and, in fact, his medical records in regards to actual past psychiatric or past mental health evaluations are pretty scant, aren't they?

A. Yes. I -- I believe it was about half an inch worth of records or something like that.

Q. Okay. And -- but were those helpful to you?

A. Yes, they were.

Q. Did you have an opportunity also to review -- and not just review a synopsis of interviews that had been done on some of his family members, but did you have -- also have an opportunity to interview those people yourself?

A. Yes, and I apologize, I forgot to mention that. I also interviewed Mr. Green's mother and his brother, as well, as part of my assessment. And I did have access to records regarding some previous interviews that had been done with Mr. Green's brother, I believe.

Q. Okay. Now, in that regard, one of the things that we specifically asked you to exclude was going into the actual details of the offense of what he's charged with; is that correct?

A. That's correct.

Q. And as you talked about earlier, you are -- you are cur -- you are oftentimes asked to exclude particular pieces of information in regards to what effect that may have on the diagnoses; is that right?

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A. That's correct. As I mentioned earlier, it's -- the concept is sort of an independent medical exam. I do that a lot with insurance companies or with other referral sources where a person is referred to me and certain records are omitted so that I can form sort of an independent evaluation of the person without it being tainted by other aspects of the history and so forth.

Q. Okay. And obviously, you were called upon and came -- traveled to the Dallas County Jail to conduct your interview process; is that right?

A. That's correct.

Q. So you knew the Defendant -- you knew he was charged with murder and you knew he was in jail for it?

A. Correct.

Q. Could you tell the jury how Gary Green presented himself to you when you came to meet him?

A. Are you asking about what he said initially or what his demeanor was?

Q. His initial appearance to you --

A. Uh-huh.

Q. -- and if you could, just describe the -- not necessarily the particulars of what he said to you, but could you just tell the jury how he appeared emotionally?

A. Yes, he was -- he was severely depressed and despondent. I had to provide considerable effort to get him to

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answer questions. He tended to look down quite a bit. He was basically in an extreme state of sadness and despondence where -- where his mood was -- was severely depressed and -- and his affect -- in other words, his emotional tone, how he presents with his facial expressions and so forth, was very flat. In other words, it was blunted. He had some signs of significant depression.

Q. Okay. And -- and did that -- I mean, did it seem unusual or was that somewhat appropriate, considering the circumstances that you found him in?

A. Well, I would expect somebody to have depression when I -- when they're in -- in the prison system and they're being charged with a capital crime, although I will have to say that I have evaluated other individuals in similar circumstances who did not suffer from depression.

Q. Okay. And when you conducted your clinical analysis of Gary Green, you said you spent a few hours that were involved just in your clinical diagnoses that didn't really involve the actual neuropsychological testing; is that right?

A. That is correct.

Q. Neuropsychological testing is going to tell you about the brain function; is that right?

A. That's correct.

Q. And these are -- these are interrelated, but they're a little bit different than just the mental and thought aspects

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that you're looking at; is that right?

A. That is correct. There -- there are different sources of information. My clinical interview provides me information about how the person appears, how they think about themselves, how they think about their lives and their problems, by me asking the person questions and then observing their -- their body language and their demeanor and their behavior clinically. And a psychologist obviously has training in doing that. The psychological testing is a -- is a standardized way of trying to measure a person's abilities, what it is that they're able to do and at what level they're functioning at.

Q. Even though Gary Green was extremely depressed and despondent when you were meeting with him, was he cooperative with you -- throughout the interview and the testing process?

A. Yes, he was.

Q. Could you describe whether or not in this testing process that you used for the neuropsych are there measures that are evaluate -- - or evaluational measures in the testing themselves to give you a degree of confidence in the results that you are getting?

A. Yes. We use -- we use different techniques to try to figure out whether the person is actually putting forth their best effort, for example. So I gave a test called the Test of Memory Malingering that is designed to evaluate whether

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a person is trying hard enough and whether they're putting forth their best effort, whether they have anything that's called -- referred to as response bias, which is a term basically for how hard somebody is trying and whether they're putting forth as much effort as they should. And then I also gave a test that's designed to evaluate whether a person is over reporting their symptoms. In other words, is a person telling me a lot of things that are unusual or unreasonable based on what -- how he appears clinically. And these tests give us some information as to whether a person is able to -- whether a person is -- is making any kind of an attempt to misrepresent their problems or their symptoms or -- or their cognitive ability.

Q. And can you tell the jury if the Defendant and his performance on those evaluation techniques there for confidence level, did he perform within the acceptable levels that gave you confidence in the results that you got across the board?

A. On the -- on the cognitive test, he performed well within the acceptable levels. And I didn't see any other evidence or problems with cognitive -- with his cognitive testing, so on the cognitive testing he did perform within acceptable levels.

On the testing of reporting of emotional symptoms, he had a tendency to record a lot of symptoms related to depression and -- and to other aspects -- other problems

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with mental functioning which, in my opinion, is consistent with his clinical presentation since he was so severely despondent. So in other words, he was endorsing a lot of symptoms with depression which is consistent with what I was seeing him -- seeing in him.

Q. Could you tell me, in regards to the cognitive aspects of the testing that you did -- and when you use the word "cognitive," break that down into something simple. What do you mean when you talk about cognitive functioning?

A. Memory, attention, and reasoning.

Q. Okay. Now, are these -- when you're testing for these cognitive issues, are you testing to determine something about the person's intellectual level?

A. Yes. Cognitive is actually a little different than intellectual, but they're related. They're both kind of the same thing, but -- but intellectual is basically a person's intelligence level, and that includes an evaluation of what they know and how well they know this, in addition to how well they can function and solve problems and think. Whereas, the term "cognitive" refers more specific to specific aspects of mental functioning, like your ability to store and retrieve information or your ability to focus your attention on a task.

So they're related, but I gave certain tests that were designed to look at his cognitive functioning, which is his memory and his attention and thinking. And then I gave

other tests that were designed to evaluate his intellectual functioning, his intelligence. And even though they're similar in -- in neuropsychological testing, they're sort of considered as different things.

Q. Were you able throughout these -- this comprehensive testing, does this able you to come up with what we talk about when we're talking about a full -- full scale intelligence score?

A. Yes, it does.

Q. What does the full scale intelligence score tell you about an individual?

A. A full scale intelligence score is a way of classifying where the individual falls in -- in the population with respect to his intelligence level. So basically it's the I.Q. score. It tells us where he falls in relation to everybody else in the population. It has an average of a hundred, and then there's certain cutoffs for what we would consider average and low average and so forth. For example, 90 to 109 is within the average range; 80 to 89 is low average; 70 to 79 is borderline; and 69 and below is generally considered to be in the extremely low or mental retardation range.

Q. Okay. And can you tell the jury what -- what you found to be -- Gary Green's intelligence level or I.Q. level?

A. Yes. Mr. Green's I.Q. level was hovering right around the upper end of the borderline range and the lower end

of the low average range, so his I.Q. -- I think his full scale I.Q. was -- I think -- I believe it was a 78 or a 79, which is -- which is sort of -- let's see here, let me just confirm that. But his I.Q. -- his full scale was a 78, which places him in the upper end of the borderline range. So in other words, he's not -- his I.Q. was not average. It wasn't even really low average, although it's hovering pretty close to there. It was in the upper end of the borderline range.

Q. And could you tell the jury briefly what you found out in regards to the cognitive aspects of the testing?

A. Yes. On the cognitive aspects of the testing, basically he didn't seem to have any real severe memory problems, but he did have some attentional problems. In other words, he did have some difficulty focusing on tasks, and these attentional problems caused some inconsistency in his scores where there was some scores that were in the normal range and some scores that were a little bit below normal. But I didn't really find a lot of evidence for a severe cognitive disturbance like what you typically see with somebody who has a lot of brain damage or a head injury or something like that.

And I did find that he did have some difficulty, too, with what's called higher level thinking or higher level mental functioning. On one of the tests that I gave him, the Wisconsin Card Sorting Test --

COURT REPORTER: I'm sorry, one more time.

A. The Wisconsin Card Sorting Test. I apologize. I'm probably talking a little too fast. On the Wisconsin Card Sorting Test, he -- he did have quite a bit of difficulty with -- with learning and mental shifting which is consistent with his -- with his lower I.Q. scores.

Q. In regards to the -- his percentile of how he would fall in the population, could you tell the jury about what range in regard to his cognitive functioning he would fall in, as regards to the scale of normality?

A. I would say if I had -- if I had to dis -- to put one label on it, it would be more or less the low average range, if you took all the -- all the test results altogether. There were some areas of impairment, but I think it was attentional, so -- so his -- his cognitive functioning was pretty consistent with his intelligence which is sort of low average to borderline.

Q. His percentile rank -- what did you assign him in regards to his percentile ranking for the population?

A. Well, for -- for the cognitive functioning, we gave a lot of different tests, and so there isn't a specific percentile rank.

Q. I'm just going by the full -- his full scale I.Q.

A. Oh, his full scale I.Q. score was a 78. And -- and so his percentile rank there is a seven, which basically means that -- that out of every hundred people he would theoretically

do better than seven of them. And 93 of them would do better than he would.

Q. Okay. And -- and so when you're talking about 93 out of a hundred people are going to have a higher cognitive and full -- and I.Q., than you, you're -- and you even -- when you say that's low average, I mean, that sounds awfully low, does it not?

A. It's -- it's pretty low in the population, compared to the population. And -- and this is -- this is actually just focused on -- that particular score is just focused on intelligence, but it is lower. You know, as I mentioned earlier, it's definitely not within average. And -- and it's actually hovering on -- on lower than low average. So it's sort of like a -- in the borderline range. A lot of people refer to this as borderline impaired. And -- and sort of like a step above mental retardation, but individuals with this level of intellectual functioning, they can usually function independently, but they will have some difficulty understanding complicated information. They may have difficulty with complex things like -- like managing their finances if things get complicated or -- or keeping track of complicated information in their personal lives, but they can usually function on their own.

Q. Did you discover the presence of any formal learning disability?

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A. No, I did not.
Q. And when I asked you about a learning disability, what is -- what are typically known as learning disabilities?
A. A learning -- a learning disability by definition is defined as a difficulty in acquiring information in a certain area where there is a decrease in scores between intelligence test scores and academic test scores. So in other words, most school systems will consider a -- a difference in 15 points between intelligence test scores and academic ability test scores to signify a learning disability.
If somebody has learning problems because of intelligence, then -- then basically the learning problems can be attributed to their low intelligence level. But if somebody has a high intelligence level and they have real low math scores or low reading scores or low spelling scores, then we start to -- to consider the possibility that they have a real specific learning disability -- it's called a formal learning disability -- in a particular area that's not due to problems with intelligence.
Now, what ends up happening, as -- as the school psychologist spoke to yesterday, is that there are a lot of other factors that come into play, like emotional functioning and things like that. But for the most part, that's what a learning disability refers to.
Q. Okay. And the point I would like to make or ask you

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about here, you were present yesterday. In fact, like -- again, you were able to sit in through -- yesterday throughout the presentation of the family members and through the school psychologist; is that right?
A. That's correct.
Q. And Dr. Gray-Smith told this jury that through her evaluation of his history, as far as academic achievement and testing, that he was -- he was basically chronic in academic failure?
A. That's correct.
Q. And she told this jury that that would be looked at to be determining whether it was due to a disability in a learning -- a formal learning disability or whether or not it was a result of mental disorder; is that correct?
A. I believe that's what she was talking about, as well, yes.
Q. And are -- so you're here to tell the jury that through your testing, you have ruled out a formal learning disability?
A. Yes. With a test score, what happens is -- a person who has chronic academic underachievement -- in other words, they do poorly in school their whole lives, they don't develop well academically, and they also don't develop well intellectually. It's difficult to -- to say too much about whether one causes the other or how they contribute to each

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other, but in Mr. Green's case, for example, he had low scores on intelligence tests and he had low scores on academic tests. And so what we're looking at in Mr. Green's case is a person who has the low average intellectual functioning and academic functioning together. So that sets the stage for a pattern of chronic academic under achievement and personal under achievement.
And then, I think to -- to answer your question, emotional problems and mental disorders definitely, as a -- as they coexist with these issues come into play whereas the academic and intellectual problems contribute to the emotional problems, and the emotional problems also contribute to the academic and intellectual problems, so it all develops together in a person.
Q. Now, Doctor, I want to move you to the area of the actual mental diagnosis or the evaluation that -- and I think as you just said, you really can't separate the intellect from -- I mean that aspect from the mental part; is that correct?
A. It's difficult to do, yes.
Q. Okay. But as far as for purposes of the actually coming in and making a diagnosis in regards to mood and thought disorders or mental disorders, can you tell the jury what the difference is between that? What's the difference between a mental illness, and what's the difference as opposed -- or just

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a behavioral disorder?
A. Yes. A mental illness is -- refers basically to -- to a disorder of either emotional functioning, which is mood, or thought. So a disorder of mood or thought is presumed to be due to sort of an imbalance in the brain functioning someway. There's a lot of evidence that's coming out now in different -- different lines of research that show that people with severe depressive disorders, for example, or with thought disorders like schizophrenia, they actually have criminal imbalances and -- and changes in metabolism in different parts of their brain. And -- and there's evidence coming out now that these start to happen at a very early age in a person's life. And then as time goes on, they develop into more chronic conditions. Those are mental disorders -- disorders of mood and thought.
Personality disorders are usually coded on another axis on the DSM-IV which is our diagnostic and statistical manual, and those refer to problems with interpersonal behavior. These are -- these are chronic problems that a person tends to have throughout their lives in the way that they behave with other people. So -- so a thought disorder basically refers to a problem with mental functioning whereas, a personality disorder is a way of classifying problems with behavior that a person might be having.
Q. Okay. Is it possible for someone to have a -- a

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personality disorder and not have a mental disorder?
A. Yes, it is.
Q. Okay. Is it -- is it common?
A. It's not very common. Personality disorders result in -- in a lot of maladaptive behavior during a person's life. In other words, they have a lot of problems with their lives. They don't really form strong positive relationships with people, as well. They don't really get along as well in the world. They don't really -- they aren't able to work as well and -- and functioning well and -- and stay married and -- and have healthy personal relationships. And so -- so there's a lot of what's called comorbidity, as -- as was referred to yesterday where -- whereas mental disorders coexist with personality disorders. And, again, as is -- as is the case with other types of conditions, these disorders sort of perpetuate each other.

For example, depression can cause somebody to be more isolated and more reclusive and not develop personal relationships, that might cause that person to meet criteria for a personality disorder, whereas a personality disorder, because a person has difficulty in their relationships, can make depression worse, so people start to have these combinations of different conditions throughout their lives that kind of make each other worse and coexist and -- and end up causing the person a greater amount of dysfunction as they

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develop.
Q. Doctor, I want to back up just a second because I want to make sure a couple of things are clear here. We are not -- you are -- you are not here to tell this jury that Gary Green is what we would -- in the legal definition of mentally retarded; is that correct?
A. He is not mentally retarded.
Q. Okay. And we -- we were not -- you were not asked and no one has ever claimed that the Defendant is insane. You were not asked to conduct anything in regards to a sanity issue; is that correct?
A. That's a legal term, and I was not asked to do anything with that.
Q. I mean, when you say a legal term, you're talking about legal in the realm of what we call -- what we consider forensic psychology?
A. That is correct.
Q. Are you -- are you a forensic psychologist?
A. No, I'm not.
Q. You're -- you're a clinical psychologist that diagnoses mental illness, correct?
A. That is correct.
Q. Okay. Can you tell the jury -- when you conducted your examination of Gary Green, could you tell them the results that you reached in regards to whether or not he had any actual

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mental illness?
A. Yes, I did. In reviewing Mr. Green's history and my test results and my clinical observation, I determined that Mr. Green has suffered from severe chronic problems with mood that include both depression and episodes of agitation and irritability and elevated mood which are associated with manic episodes or bipolarity. And I also concluded that he has difficulty with thought. He has a lifelong history of suspiciousness and paranoid thinking and paranoid behavior where he -- he believes that other people are trying to -- to hurt him or do him wrong. And -- and he mistrusts other people, and he's hypervigilant and suspicious.

When you have those two main categories of problems together, they -- that meets diagnostic criteria for schizoaffective disorder of the bipolar type. It's a little bit different from bipolar disorder whereas bipolar disorders primarily involves rapid and extreme fluctuations in mood. And it's different from schizophrenia where a person may or may not necessarily have problems with mood at the time that they're having their thought disorder. So with schizoaffective disorder, the person is having problems with mood, and then they have problems with thought. And the problems with thought happen during the problems with mood, but they also happen at other times when the person is not having problems with mood.
Q. And, Doctor, can you tell the jury some -- what are

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the common features of an individual or how would the -- how would a person suffering from a schizoaffective disorder bipolar type, how that might affect that person's day-to-day abilities to function?
A. Well, they're going to have episodes of severe depression where they become really withdrawn and they don't -- they don't do very much. They have episodes of sadness. They'll have what's called affective instability, which means that they'll be depressed on some days, severely depressed, and then other days they can be very anxious and agitated and -- and they can have an elevated mood. And so -- so when they're anxious and agitated, they're not going to really be able to function well on those days. And then -- and then they also will have a disturbance in thought where they can have paranoid delusions.

So in other words, during those times that they're having those episodes of paranoid delusions, they're going to -- they're going to believe things that are not true. They're going to think that something is happening that is not really actually happening, that people are trying to hurt them or people are conspiring against them or -- or that people are evil or people are trying to do something bad to them. It can -- it can even rise to the level where the delusions are a severe break from reality to where a person believes that there's -- you know, a plot for aliens to take over the world,

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for example, or something like that, that causes them to -- to become extremely reclusive or something like that. So it can affect a person in a lot of different ways because of their problems with mood and their problems with thought.

Q. Okay. And, Doctor, is schizoaffective that you have diagnosed the Defendant, you said that you also went back and -- and the information that you had from his hospitalization about a month before, you -- you had the opportunity to look and review and -- let me just ask you outright. Your -- your actual clinical diagnosis is somewhat different than what he was diagnosed with at Timberlawn; is that correct?

A. Yes.

Q. Can you tell the jury how it differs and -- and if you can -- and we'll talk about it -- how afterwards.

A. Yes. In my review of the records from Timberlawn, it appears that he was diagnosed with a major depressive disorder with psychotic features, which basically means that the person is believed to become psychotic only when they are severely profoundly depressed. In other words, these are people who get so depressed, that -- that they lose touch with reality and they become psychotic because of their depression primarily.

And then he was also -- there was also a -- what's called a rule out of bipolar disorder which basically means that they felt that there was some indication that the

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person suffered from bipolar disorder, but they didn't have enough evidence and -- and they felt that clinicians maybe should get more -- usually when people put a rule out is -- is an indicator that there needs to be more evidence in order to formally make that diagnosis.

Q. And did the records that you reviewed from Timberlawn Hospital reflect that he was at Timberlawn for a period of about five days?

A. I believe so, yes.

Q. And he was seen there by a couple of different psychiatrists; is that right?

A. That's correct.

MR. JOHNSON: May I approach, Your Honor?

THE COURT: You may.

Q. (BY MR. JOHNSON) Doctor, I want to go through some of these Timberlawn records with you, sir.

A. Okay.

Q. They've been admitted into evidence. I want to have you look at my copy because I made some notes. You also have a copy of these, also; is that correct?

A. Correct.

MR. JOHNSON: Andy, do you remember the exhibit number on these Timberlawns?

MR. BEACH: In the 140s maybe.

(Discussion off the record.)

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Q. (BY MR. JOHNSON) So what I'm going to ask you to look at is -- is included within -- what's been offered and admitted into evidence as State's Exhibit Number 145. I want to go through a couple of the particulars here and talk to you about the commonality between what he had described back at the initial hospitalization and how that affects your interpretation and diagnosis. Could you -- let's talk about this. Can you tell the jury what it was -- that when he was in Timberlawn Hospital, what it was that he was reporting as the -- why he was there?

A. Yes, he -- he was reported to be suffering from depression, increased isolation, decreased energy, increased hopelessness. The clinician described him as being passive. In quotes, he stated just go to sleep and not wake up. He denies suicidal ideation, but said I just want to escape the pain. The note indicates that there were no prior suicide attempts. He also denied homicidal ideation. And -- and denied -- as well as tendency to harm himself and others at that time. He -- he had racing thoughts saying I can't shut off my thoughts.

Q. Okay. Let me stop you right there. I want to talk about a couple of these things and talk about how they are clinically important in the diagnosis that you made. These are the -- this is the initial assessment that was done at Timberlawn Hospital; is that correct?

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A. I believe so, yes.

Q. And he's talking about -- he's talking about high levels of depression, correct?

A. Correct.

Q. High levels of isolation?

A. Correct.

Q. Very low energy?

A. Correct.

Q. High levels of hopelessness?

A. Correct.

Q. And racing thoughts, that he can't shut off his thoughts?

A. Correct.

Q. Okay. And -- and these -- these are questions -- and these are put down here by -- by the individuals that are -- and -- and this isn't just tell me how you feel. He starts saying, well, I have high energy, low energy, high depression -- I mean, these are in response to a clinical evaluation that was done like you've described; is that correct?

A. Yes, this appears to be an intake assessment to where -- where they -- he was evaluated.

Q. Okay. And in that regard, the -- they would have been doing the type of evaluation and talking to him about the things that were going on in his life and in his mind that they

could -- that they could use to try to form the initial assessment, correct?

A. I believe so, yes.

Q. The fact that he reports high levels of depression, obviously, since you said that their initial assessment of him was that he suffered from major depressive disorder; is that correct?

A. Yes.

Q. And then they said later that to rule out bipolar disorder -- now, I want take back up on that just a moment. When -- when you see rule out something in a clinical diagnoses of an individual --

A. Yes.

Q. -- does that mean that they're saying that they ruled out that that disorder is there, or what does that -- what is that telling you?

A. No, typically clinicians use the term "rule out" to -- to describe a -- a situation where they are suspecting that the person has these types of symptoms, but they need more information in order to fully provide that diagnosis. So in other words, they think that this person might have this problem, but they need to know more in order to fully diagnosis it.

Q. Okay. And when you have an individual that's talking about racing thoughts --

A. Yes.

Q. -- okay, does that seem to show you a -- a distinction as -- as someone would normally think of as a -- as a major depressive state?

A. No. Most of the time when people have severe depression, they don't have racing thoughts. In fact, their thinking slows down a lot, and they get into a state where they have what's called psychomotor retardation which is their thinking slows down to the point where they're very, very slow. Racing thoughts is more consistent with a manic episode where a person is not able to control their thinking, and their thinking is happening -- happening very rapidly. And -- and so racing thoughts is not consistent with a major depressive episode.

Q. And when you have -- and when you used the term awhile ago of "bipolar," bipolarity refers to someone who suffers from periods of intense lows, as well as periods of intense highs; is that right?

A. Correct.

Q. And so when you hear people talking about that, that's what you're looking for is -- is the presence of depression, as well as the -- the existence of psychotic episodes for that individual also, correct?

A. A lot of times the -- the manic episodes or the depressive --

Q. I'm sorry, manic instead of psychotic.

A. Yes. Could get so severe that it can lead to psychosis.

Q. Okay. Going on further in this evaluation, they talk there's high levels of anxiety?

A. Yes.

Q. High levels of irritability?

A. Yes.

Q. And mood swings?

A. Correct.

Q. And mood swings. What is that telling you as a clinical diagnostician?

A. Well, it's telling me that -- that there's periods of elevated mood and periods of depressed mood that is more consistent with bipolarity.

Q. Okay. There's also -- he was also diagnosed and questioned in regards to paranoia; is that correct?

A. Correct.

Q. And it -- and it specifically states the presence of paranoia, and probably one of the classic lines about paranoia -- could you -- could you tell the jury what the Defendant reported in regards to the fact that he thought people were out to get him?

A. Yes. At first he said, people are plotting against me, they're talking about me, and then he stated, I'm not

paranoid, I know this is happening.

Q. And that's -- that's kind of the old joke, isn't it, it's not paranoia if they're really out to get you?

A. Sure.

Q. Okay. And so these -- these are the responses that are being put down by the -- by the admitting individuals or people. And -- and finally in regards to this initial diagnosis, talks about he can't sleep; is that right?

A. Correct.

Q. One of the questions here -- and one of the -- on this form talks about the precipitating event -- why this person came -- came to the hospital. Can you tell the jury what -- what is indicated in response to that?

A. Yes. Mr. Green said, I want to know the truth.

Q. He wants to know the truth about what's causing -- appears to be in response to what's causing all of these conditions and these things that he's going through. Does that -- does that appear to be accurate?

A. I -- I would assume that. I'm not sure what he was referring to when he said, I want to know the truth.

Q. We'll just take it at -- in fact, when it says there that I want to know -- when it talks about the precipitating event, it's in quotation marks, I want to know the truth?

A. Yes, that's what he said.

Q. Okay. Can you tell the jury when Mr. Green was put

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in Timberlawn Hospital, could you tell the jury what medications he was prescribed to -- to have an effect upon the conditions that he was reporting and the major depressive disorder that he was being diagnosed with?

A. Yes. I -- I can tell you the names of medications. I'm not a psychiatrist, so a lot of detailed questions about medications will be outside of my area of expertise. But it appears that he was taking Risperdal and Remeron.

Q. And is Risperdal typically used to treat evidence and symptoms of schizophrenia?

A. Yes. It's a medication that's commonly used for thought disorders.

Q. Okay. And the Remeron, that's something you typically see for depression and --

A. Correct.

Q. Okay. I want to ask you now to look at the diagnosis here that's -- that's contained within these records by Dr. John Pascoe. The -- and this appears to be the final diagnosis before Gary Green was discharged. I want to talk about it again. He's found major depressive disorder, recurrent with psychotic features. What is -- what is that term -- what's psychotic features? What does that indicate to you?

A. That indicates that -- that the psychiatrist felt that his depression was severe and that it was -- it was severe

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enough to be promoting psychosis and that he saw psychosis at the time of the assessment.

Q. Okay. I want to look at the consultation notes made by that doctor -- by that psychiatrist, also. It said that after being in the hospital for a day or two -- let's see, he was admitted -- on the 22nd, the psychiatrist made a note that the Defendant felt that he was even more depressed being in the hospital and was eager to be discharged. I want to ask you something about that. Is there anything about that that would surprise you?

A. No, I -- I work in a -- on a locked unit in San Antonio at the Nix Hospital System, and its not uncommon for the patients to themselves feel like they are more depressed after being in the hospital. Being in the hospital is not pleasant. There's other people around that have mental or emotional problems. And you're away from your everyday routine and your home and your environment and your family, and so -- so it's not uncommon for people to -- to feel more depressed or -- or believe that they're more depressed when they're in the hospital.

Q. Okay. And I want to ask you also, in regards to the -- the diagnosis that was made by a couple of the different psychiatrists there in regards to the major depressive disorder. When we're talking about major depressive order, are we talking about a severe mental illness?

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A. Yes.

Q. And when I talk -- when I use the word "severe," I mean, mental illness can -- doesn't have to always be severe, does it?

A. No, it does not.

Q. But when you're talking about the type of diagnosis that was made by these doctors, major depressive disorder, recurrent with psychotic features, as well as your diagnosis of schizoaffective -- and they're really not -- and there's not really -- these are not mutually exclusive diagnoses at all, are they?

A. No, they're not. They actually share a lot of the same common symptoms. It's just a matter of when the symptoms are occurring in time and whether they occurred together or not.

Q. Okay.

A. Uh-huh.

Q. And the -- your diagnosis of schizoaffective of bipolar type, is that a severe mental illness?

A. Yes, it is.

Q. And are you going to fully expect that a person suffering from that mental illness to -- to behave differently than obviously someone that doesn't have a mental illness?

A. Yes.

Q. And can you tell the jury how a schizo disorder of

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the type that you diagnosed, how might that affect a person in society?

A. Well, as I mentioned earlier, the person is going to have episodes where they're going to be severely depressed and withdrawn. They're going to be unmotivated. They're going to have difficulty sleeping. They're going to have problems with their appetite. They're going to have episodes of intense sadness. It could affect their judgment and their thinking. And -- and then they might have episodes -- in schizoaffective disorder where they have agitation or irritability or an elevated mood. And off and on during that time other people are going to see them as being suspicious. They're going to be complaining of suspicious or paranoid thinking. These people are going to be -- individuals with this diagnosis are going to believe that people are trying to harm them or hurt them in some way or that people are trying to do something bad to them. They're going to be paranoid or delusional, or they're going to have some sort of delusion where they believe something is happening that is not really happening.

Q. Doctor, I want to go forward some in these records here, and basically I just want to point out some of the things that were being reported and being diagnosed. I want to ask you to look at this page, and these are not actually numbered. I don't believe State's 145 are either. But included in these records are indications, and during another psychiatric

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evaluation, the Defendant had reported his history of depression; is that correct?

A. Yes.

Q. Could you tell the jury what he -- how he reported that to that psychiatrist at that time?

A. Yes. It states there that he said, I've had depression basically all my life.

Q. Okay. Does he go on to state that he's been -- he's misunderstood?

A. Yes. He says, I'm misunderstood.

Q. People think that he's F'ing crazy?

A. Yes.

Q. That's what they're really thinking about him?

A. Correct.

Q. And that he can't interact with anyone?

A. Correct.

Q. And what does he -- how does he -- what does he finally say in regards to those -- I think people have ulterior motives?

A. I think people have ulterior motives is what he seems to say there, yes.

Q. Next page, dealing with that same psychiatric evaluation, he talks about passive suicidal ideation, does he not?

A. Yes.

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Q. And what does he report?

A. He says that people are against him, but that he doesn't have a suicidal plan.

Q. Okay. And then he does not want to -- he does not ever want to wake up?

A. Yes, I'm sorry, I didn't see that. He does not want to wake up.

Q. It also talks in the -- in the initial plan of care that was for this individual, talks about the fact that they -- that they are aware of there that there is a -- a possible family history of bipolar disorder; is that correct?

A. Correct.

Q. Were you aware that after -- well, let me stop -- let me come back to that. I want you to look at this note that -- one of the group notes that was made in regards -- in response to his treatment there at Timberlawn. And we spoke about it a moment ago that the Defendant -- how did the Defendant report that he was doing based upon his hospitalization there?

A. On a note dated 8-22-09, it says: Patient states he feels more depressed being here.

Q. Okay. And let me stop you right there. He's reporting that his symptoms are actually getting worse; is that correct?

A. It appears to be so, yes.

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Q. Okay. And, again, going back to what he said earlier, being in a -- being in a, quote, unquote, mental hospital, it's not a fun place to be, is it?

A. No, it is not.

Q. And -- I mean, the reporting and the psychiatric notes and evaluations are clearly indicative of someone suffering from severe mental illness. In fact, he was diagnosed with severe mental illness?

A. Correct.

Q. And by his own report, his depression is getting worse due to the fact that he's being hospitalized and in that environment.

A. That's what he is reporting, yes.

Q. Okay. And finally, Doctor, I just want to ask you, in regards to his -- is there a description in there about his being withdrawn and isolated?

A. Yes, on a note dated 8-21-09, by nursing, it describes him as being withdrawn, blunted affect, and depressed mood. Patient isolating in his room most of the shift.

Q. Okay. In another group note -- and, again, these are -- these are notes that are taken over the course of time that he's there and these -- and these different psychiatric evaluations and these different group meetings when people are meeting with him; is that correct?

A. Correct.

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Q. Can you tell how he's reporting on this particular occasion?

A. Yes. It says: Patient reported worthlessness, no place here in this world at all. I know life after death is for me.

Q. Okay. And I mean, do these -- do these phrases -- and obviously, whoever is doing these evaluations, they're including these -- these notes and these quotations in their evaluation. What is the significance of these type of things when -- when -- for you when someone is reporting these things to you?

A. This is a very negative ideation, and it's consistent with what we typically see in people that are severely depressed, in other words, people who are so depressed that they really, really think negatively about their circumstances or their situation. There's a lot of hopelessness and helplessness in there.

Q. You see the part in here where he's talking about that he's really in this mental hospital just so he can -- because he's there for a good time so he can get him a government check. Do you see any part in the notes about that?

A. I did not see anything to that effect, no.

Q. Group -- group notes from later in the week, talking about the Defendant, just sits quietly, doesn't participate. Could you talk to us about that? What does -- what does that

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indicate to you or what might that indicate to you?
A. That indicates to me that he's very withdrawn -- socially withdrawn, that he's in an emotional state where it's probably very difficult for him to have enough initiation to socialize with other people. And -- and basically a person who's -- who's mentally and emotionally isolated and withdrawn themselves.
Q. And finally, Doctor, on this last note that I want you to review, could you talk and explain what the attending psychiatrist put down in regards to his feelings?
A. Yes. Reported feelings of paranoia, and then in parenthesis, everyone has hidden agendas, people exploit you. Increased anxiety, increased depression, increased isolating behaviors.
Q. I want to stop you there.
A. Yes.
Q. This is -- this is a psychiatric note that the person has -- has -- that his levels of anxiety are increasing, his levels of depression are increasing, his level of isolated behaviors are increasing?
A. Correct.
Q. Okay. It doesn't sound like whatever they're doing in there is actually -- is actually doing much to combat the -- the reported symptoms that he's been experiencing; is that right?

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A. Well, it appears like he's still suffering from severe symptomatology and -- and according to these notes, some of it may be increasing.
Q. There's a quotation -- in the next line, there's a quotation coming from the Defendant. Can you tell -- can you tell them how he reported to the psychiatrist?
A. Yes. Well, the psychiatrist reports positive suicidal ideation, passive. And then in quotes it says: I'd be happy once I die.
Q. And how did he report feeling?
A. Patient identifies hopeless feelings, stating, I'm worse than when I got here.
Q. Okay. And as we've talked about, also, Doctor, I mean, not -- I mean, that's not the result that you're looking for when you have a person that's hospitalized, is it?
A. No, of course not.
Q. Okay. And you are aware that he was subsequently discharged with the diagnosis and a referral for a follow-up at -- I'm not -- you're not familiar with the North Star program or the Metrocare Clinic here in Dallas, are you?
A. I'm not familiar with those programs.
Q. Are you familiar with the Timberlawn Hospital here in Dallas?
A. No, I'm not familiar with that hospital, either.
Q. And you were also asked to review --

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MR. JOHNSON: Judge, if I could ask the reporter --
What notes were the Metrocare notes?
COURT REPORTER: 146.
Q. (BY MR. JOHNSON) I want to ask you to look at my copy of what's been offered and admitted into evidence as State's Exhibit Number 146. And I want to ask you if after Gary Green was discharged from Timberlawn Hospital -- and let me ask you this. The notes reflect that Gary -- Gary Green was discharged from Timberlawn because he requested to be discharged; is that correct?
A. I believe I recall reading that somewhere.
Q. Okay. And there is an actual way that you can forcibly detain or hold someone in a mental hospital, correct?
A. Correct.
Q. And that's -- and what's the actual terminology for that?
A. Commitment.
Q. Okay. And in order to get a commitment, what's the standard that has to be met?
A. The person has to be determined to be an impending danger to himself or others at that time.
Q. Okay. And stating that you think he'll be better off when he's dead, I just want to -- I just don't ever want to wake up again, things are -- those descriptions, they don't

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meet the level of being able to actually get someone -- force someone to stay, do they?
A. It appears that the clinician did not feel that they needed a commitment at that time.
Q. Well, he's not actively saying, I'm going to kill myself today, I'm going to kill myself tomorrow, or I'm cause anybody else that kind of harm. There's no impending actual threat at that time?
A. It appears to be so, yes.
Q. Okay. It appears that once he left Timberlawn Hospital, they had given him instructions to follow this -- follow this up. And when he left the hospital, he was -- he left the hospital on those medications that he had been given for his depression and for his -- the treatment of the schizophrenic type symptomatology; is that correct?
A. Correct.
Q. And he was referred over to North Star, and, in fact, he did follow up over there a few days later; is that correct?
A. It appears that there's a clinical note dated 8-27-09.
Q. Okay. And so he did go back there at that time and he was -- and he went in, they did the same type of evaluations with him at that time speaking about the symptoms that he was experiencing and the -- reporting basically the same

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symptomatologies; is that correct?
A. Correct.
Q. Okay. Now, Doctor, as far -- Doctor, the -- the mental diagnosis that we have been talking about here -- and, again, I just want to stress, when you talk about a schizoaffective disorder bipolar type, we're talking about a severe mental illness?
A. Correct.
Q. Is that -- is that consistent with the things that he had been reporting not only when he was in the Timberlawn Hospital, but also when he went to the North Star?
A. Yes.
Q. And is that consistent with the information and the diagnosis that you formulated for this particular Defendant yourself?
A. Yes, it is.
Q. Okay. And that is the mental diagnosis or the thought mood disorder that you described earlier; is that correct?
A. That is correct.
Q. Okay.
MR. JOHNSON: Judge, can we approach real quick?
THE COURT: You may.
(Sidebar conference.)
Q. (BY MR. JOHNSON) Doctor, you had said earlier that

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the -- other than the -- what we classified in regards to the mental illness aspect of the diagnosis, there is also a -- behavioral disorders. You talked -- you talked about those being what is referred to as Axis II diagnoses; is that correct?
A. That is correct.
Q. Could you -- without getting too technical, could you tell -- tell the jury what's the distinction really between an Axis I and Axis II diagnosis?
A. Yes. An Axis I diagnosis refers -- is where we code mental disorders like depression, schizophrenia. These are serious problems that imply problems with brain function and problems with mood and thinking, whereas Axis II is a place where we code personality and behavioral problems. These are considered -- they can be serious, as well, but they're considered to be -- to involve more how a person relates to others around him or how a person behaves or -- or acts in the world.
Q. Okay. Now, Doctor, in regards to the -- Gary Green, were you able to also diagnose him with personality disorder?
A. Yes. I wasn't able to diagnoses him with a specific personality disorder, and I didn't do a thorough enough assessment to do that, but I was able to diagnose him with features of different personality disorders.
Q. Okay. And can you tell the jury what personality

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disorders or what your actual Axis II diagnosis was?
A. Yes. In -- in my report with the information that I had at that time, I felt that he had features of paranoid personality disorder. And this is very common in people with schizoaffective disorder where their paranoid thinking is sort of part of their personality. These are people who -- people who have this condition often believe that everybody is out to get them, that people are trying to hurt them, they're very mistrustful of others, they're very mistrustful of everybody else's intentions. And this is something that is occurring every day in their lives, and it's affecting the way that they interact with other people. It can make them avoidant or make them not have relationships with other people or make them be more suspicious or hostile to other people because they feel that other people are -- are doing something bad to them.
I also felt he had features of what's called borderline personality disorder, which -- which includes a lot of -- what's called behavioral decompensation. People with borderline personality disorder, whenever they feel threatened or they feel that something bad is going to happen to them or they feel abandoned, they -- they can go into a rage, they become irritable, they lose control of their behavior, they -- they also have a lot of what's called suicidal gesturing, which means that they tell people over and over again that they'd rather die or that they want to kill themselves or things like

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that. So he had some features of that personality disorder.
He also had features of what's called avoidant personality disorder. People with this type of disorder, they -- they tried to -- they tend to stay to themselves. They don't like to socialize. They don't enjoy socializing. They would rather be in their room watching television than talking with people. They would rather be on their own. And, in fact, they get very nervous or anxious around other people. And -- and they have difficulty relating to other people.
And then -- and then I also think that in addition to his -- his depression, he also sort of has a depressive personality. In other words, he's the type of person who's always thinking negatively about things. You know, people with depressive personalities, they don't always have to be severely depressed, but just most of the time in their lives, they're -- they -- they're -- they think negatively about themselves. They feel kind of hopeless and helpless and they think that bad things are happening to them all the time. They sort see the glass as half empty, instead of half full. So at the time I felt that he had these features. I -- I have modified my opinion somewhat after sitting in the courtroom, and I can discuss that if needed, as well.
Q. That's what I was going to talk to you about next.
A. Yeah.

Q. Again, going back to what we spoke about earlier in regards to the referral questions that we asked, we were asking you to perform a -- a mental diagnosis in regards -- well, a complete mental diagnosis, but specifically in regards to really the Axis I, the mental aspect.

In regards to the borderline personality or the -- I'm sorry, the personality disorders, several of which you've kind of defined and discussed, there's another personality disorder known as antisocial personality disorder; is that correct?

A. That's correct.

Q. Okay. And in order to -- and one of the -- probably the most common element or the common feature of the antisocial personality disorder is a complete understanding and a complete history in regards to the person's criminal behavior; is that right?

A. That's correct.

Q. Okay. And that information in regards to the mental diagnosis, that information was not provided to you, was it?

A. That's correct. The referral question was to evaluate his -- his mental functioning, his mental disorder, and at the time that I conducted my assessment and -- and wrote my report, although I knew that the Defendant was charged with capital murder, I did not have information regarding his -- his criminal history.

Q. And it was not necessary for what you were asked to do, was it?

A. No, it was not.

Q. Okay. Now, as -- as you said just a moment ago, as an expert witness in a case, you're allowed to sit in here and actually hear -- hear testimony and you were able to hear the testimony from the Defendant's family members, as well as Dr. Gray-Smith; is that correct?

A. That's correct.

Q. After hearing this information, do you have any opinions as to whether or not the Defendant does, in fact, exhibit characteristics that would be consistent with antisocial personality disorder?

A. Yes, I think his -- his criminal history would meet the criteria for -- one of the criteria for antisocial personality features, as well. One of the -- the things about personality disorders is that in order to diagnose somebody with a personality disorder, there has to be some evidence that they don't demonstrate that particular issue as a result of another condition.

In other words, if a person avoids other people because they are depressed, then they may not meet the criteria for avoidant personality disorder. They'll only meet the criteria for avoidant personality disorder if they avoid other people when they're not depressed, as well. And so -- so when

I'm diagnosing a mental disorder in somebody, I do extensive testing and extensive assessment, but if I want to diagnose a behavioral disorder, I have to be more specific, and I have to be able to rule out that those features of those behavioral disorders were not caused by another condition, such as a manic episode or a depressive episode and so forth.

But I'm sorry for the long-winded answer, but to answer your question, yes, I do feel that after what I've learned since I've been here, that Mr. Green will -- will meet DSM-IV diagnostic for antisocial personality features or possibly an antipersonality disorder, as well.

Q. Okay. Is there also some things that -- and when we spoke about this -- and -- and talking about it, you said that there are some things about us that certainly need more information in regards to a couple of the particular symptoms that you looked for in your DSM-IV evaluation. What -- what particularly are those?

A. Well, we're -- we're looking for -- in order -- in order for a person to meet criteria, they have to -- they have to exhibit certain symptoms and certain features or certain behaviors. And -- and when we're looking at mental disorders -- for example, when we're looking at depression, we look for disturbances in sleep and appetite, mood, sadness, lack of initiation, lack of interest in -- in usual activities and so forth.

When we're looking at Axis II diagnoses, we look at what kinds of problems has this person had in their interpersonal behavior that are causing them social and occupational dysfunction in their lives. In other words, what kind of problems are they having that are interfering with their everyday living? And -- and oftentimes individuals have -- and you've heard this term a lot lately -- is comorbidity where they have a lot of different things. And so it's not uncommon for us to find an individual to have multiple features of multiple personality disorders all mixed in together.

In Mr. Green's case, I saw features of avoidant personality disorder. I saw features of paranoid personality disorder. I saw features of borderline personality disorder and -- and depressive personality disorder. And -- and the more I learned about him, I also see features of antisocial personality disorder, as well.

Q. And the distinction between the actual personality disorder and a mental illness -- a mental illness is -- I mean, the personality disorder is your -- your behavior, your interaction with others. A mental illness, the Axis I diagnosis goes to an actual chemical imbalance, something -- I mean, something in the brain that can't be controlled by the individual; is that right?

A. The mental illness is -- is implied that there is --

that there is a much greater amount of dysfunction in thought and mood and -- and implied brain functioning, as well. And so -- so as we mentioned before, the -- the personality disorder describes a person's behavior, whereas a mental disorder describes a person's functioning, their -- their mood and their thinking on -- on a different kind of a level. And, yes, people can -- and they often do, will have a mental disorder and a personality disorder.

In Mr. Green's case, no matter what personality disorder that he has, it doesn't matter if he has all of them, he still has schizoaffective disorder and it's still severe. He still has episodes of severe depression, mixed in with agitation and mania and racing thoughts, and he still has a lifelong history of paranoid and delusional ideation that happens with the mood problems and without the mood problems. So either way, regardless of how many personality disorders he has, he's still going to meet diagnostic criteria for schizoaffective disorder.

Q. Schizoaffective disorder is an actual treatable medical -- medical, slash, mental condition, is it not?

A. It's treatable, yes. I mean, there's medications that are given to treat it. It's a chronic condition, so it's something that -- that happens throughout a person's life and it will recur. Just like all other mental disorders, it'll get exacerbated in times of stress. In other words, when people

get more stressed or more dysfunctional, the disorder will get worse. When people have good stability in their lives and good support and good treatment, the condition will get better. So it's just like any other mental disorder where there are treatment options, but there's a lot of different factors that come into play as to whether a person does well or not.

Q. But the drugs that we talked about earlier that the Defendant was placed on and put on, those are drugs that are -- that are specifically designed -- are designed and used to treat the symptomatology of both schizoaffective and depression; is that correct?

A. Correct.

Q. Doctor, I want to ask you something -- briefly about the comorbidity of drug usage in regards to behavioral disorder -- or mental illness. Do you often find that individuals suffering from mental illnesses will self medicate?

A. There is a -- there's a very high comorbidity between mental disorders and substance abuse. In other words, those two things exist hand-in-hand in a large number of people. And -- and, yes, in -- in certain people, people with untreated depression and anxiety or people who don't -- who have all different types of mental disorders, schizophrenia or whatever it may be, there is a much higher incidence of them over using illicit drugs and alcohol. And -- and, yes, the -- the -- it's commonly felt that they -- that they, quote,

unquote, self medicate. In other words, they -- they're trying to sort of get some relief from the -- the tension and pain and emotional turmoil that they're experiencing as a result of their mental disorder so they have a much higher tendency to abuse legal drugs and illegal drugs.

And then with comorbidity, what ends up happening is that the drugs can make the condition worse. In other words, it's not an effective treatment because it causes the problems -- the person more problems in their life. So as they use drugs as an ineffective way of treating their mental disorder, they get worse over time. And so those two things exist together in a large number of people that are dysfunctional.

Q. Okay. Doctor, the last area I want to talk to you about is an area -- I guess you're going to tell us. Do you have any expertise in the area of psychopathy?

A. No, I do not.

Q. And can you tell the jury what psychopathy is?

A. Well, psychopathy is a term that is sometimes mistakenly used as a synonym -- thought to be similar to antisocial personality disorder or sociopathy, but it's a -- it's a specific term that's used clinically -- that people use who do a lot of research in the area and -- and work in the area of forensic psychology. As clinicians, I don't have specific training and experience in evaluating and treating

antisocial personality disorder. For example, I can diagnose it in a person who -- who comes into my office if -- if they meet the diagnostic criteria, but psychopathy is a different -- is a term that refers to something related, but it does have different meaning than antisocial.

Q. And you are not -- again, you're not -- you're not a forensic psychologist?

A. Correct.

Q. You weren't asked to perform a forensic evaluation of the Defendant?

A. Correct.

Q. And you have no expertise in the area of psychopathy or what's -- You're familiar with what's known -- or you're familiar with the terminology of the HARE, PCL-R; is that correct?

COURT REPORTER: The what --

Q. (BY MR. JOHNSON) The h-a-r-e, hare, PCL-R -- PCL, dash R -- Psychopathy Checklist Revised; is that correct?

A. I'm -- I'm familiar with the terminology, but I've never used or administered that test.

Q. Doctor, I believe that's all the questions I have for you now, sir, thanks.

THE COURT: Ladies and gentlemen, we're going to take our morning break.

THE BAILIFF: All rise.

(Jury excused from courtroom.)

THE COURT: On the record. On the record.

MR. JOHNSON: Judge, at this time the -- comes now the Defendant, we're going to move for a motion and ask the Court to grant a Motion in Limine with regards to attempting to question or trying -- or questioning this witness outside of any of the areas that he's qualified to testify. He's already testified -- he's already testified that he's not capable of testifying in matters -- in relation to matters of forensic psychology. And we're going to ask that the State not continue to inquire of him in matters relating to forensic psychology and matters relating to future dangerousness which would be inappropriate and impermissible under the current status of the law.

THE COURT: All right.

MR. BEACH: I'm not going to ask him his opinion about future dangerousness. That motion is so broad that if I -- if the word "murder" comes out of my mouth, you know, he might object that I'm getting outside his area of expertise, so I'm not going to ask him any kind of ultimate issue opinion about future dangerousness.

MR. JOHNSON: Well, also, it goes to the issue in regards to trying to have this witness come in and try to do some type of psychopathy rating.

THE COURT: I -- I understand what -- what you

want. I think that --

MR. BEACH: It can be handled by objection, hopefully --

THE COURT: I think it can be handled by objection rather than Motion in Limine, so I'm not going to grant a Motion in Limine, but feel free to object and we -- we can talk about it.

MR. JOHNSON: Well, okay --

THE COURT: I'm just not going to grant a Motion in Limine. I'm not saying that I wouldn't sustain that objection -- that very objection that -- that you're making. I notice that if you ask that in a very direct line which he knows it will get sustained, but as far as --

MR. JOHNSON: Well, I can tell you, Judge, there's about three minutes after we begin this examination, that we're going to have to have another hearing because I'm certain --

THE COURT: Okay, I disagree.

MR. JOHNSON: Okay.

THE COURT: I'm not saying that we won't have a hearing. I think he's going to ask it right. So anyway --

(Discussion off the record.)

MR. BEACH: Judge, do I need to offer that letter now?

THE COURT: It's already been admitted for

record purposes.

MR. BEACH: Oh, for record purposes.

THE COURT: All of those have been admitted for record purposes.

MR. BEACH: He has no objection to me reading that?

MR. JOHNSON: I have no -- what number is it?

MR. BEACH: It's 148.

MR. JOHNSON: I have no objection to him reading the agreed-upon sentence from State's Exhibit 148 that's been admitted for record purposes.

THE BAILIFF: All rise.

THE COURT: Okay.

(Jury returned to courtroom.)

THE COURT: Thank you all. Please be seated.

Cross.

CROSS-EXAMINATION

BY MR. BEACH:

Q. State your name for the record again, please.

A. My name is Dr. Gilbert Martinez.

Q. And you are the same Dr. Gilbert Martinez that testified before the lunch break; is that correct?

A. Correct.

Q. Doctor, let's just get set in stone what Gary Green is not, okay?

A. Okay.

Q. Based on your training and experience and your -- you spent about six, seven hours total with Gary Green in your lifetime; is that correct?

A. Correct.

Q. Gary Green is not schizophrenic?

A. Correct.

Q. Gary Green is not bipolar?

A. Correct.

Q. Gary Green is not mentally retarded?

A. Correct.

Q. And you did six separate I.Q. testing procedures; is that correct?

A. I gave -- I gave one I.Q. test that has 14 subtests.

Q. Okay. And it yielded six different types of I.Q. scores; is that correct?

A. It yields -- I'm not sure if it's six different types. I think it's five, if I'm not mistaken.

Q. That's not a big deal. Five or six?

A. It's five.

Q. And the values fell between 78 and 84; is that correct?

A. That is correct.

Q. And four of the five values you testified to fell in the low average range; is that correct?

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A. That is correct.
Q. And were you provided Mr. Green's penitentiary records, sir?
A. No, I was not.
Q. And since you were not provided his penitentiary records, would it surprise you that his screened I.Q. in the prison system was 105?
A. Yes, I would be very surprised.
MR. BEACH: May I approach, Judge?
THE COURT: You may.
MR. BEACH: Did you pull them out? Are you tricking me again?
Q. (BY MR. BEACH) This is a prison record. I.Q. -- what does that say there?
A. It says 105.
Q. Okay. Here's another prison record. We can look through all of them. The same I.Q. of 105; is that correct?
A. Yes. I would be interested to see what test they used.
Q. Okay. Do you have any explanation, Doctor, as to why Mr. Green's I.Q. went from 105 down to 78 --
A. Yes.
Q. -- after he murdered Lovetta Armstead and Jazzmen Montgomery?
A. I would be very interested to see what test was used

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because different tests have different reliability and validity. There are some tests that are just screening measures -- in other words, a person can be asked a few questions. There's even tests on the internet that a person can take to give you an I.Q., but it's really not considered acceptable methodology for psychologists and neuropsychologists, so I -- I would like to have more information about that before I can explain a discrepancy.
Q. You told us that Mr. Green has cognitive deficits; is that correct?
A. That is correct.
Q. But, again, whether it's his I.Q. -- and you differentiated I.Q. from cognitive deficits; is that right?
A. That is correct.
Q. But they're similar; is that correct?
A. They have a -- there's a lot of overlap in functioning, yes, correct.
Q. You told us that based on his low average I.Q.'s in four to five areas, you would expect that Mr. Green could live independently; is that correct?
A. People with I.Q.'s in that area usually are able to live independently; that's correct.
Q. And you sat in here yesterday and you heard the education expert; is that correct?
A. That is correct.

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Q. That Mr. Green wasn't -- should have been referred, I guess, for some type of special ed evaluation?
A. Correct, I did hear that.
Q. And you've also -- you read a letter here -- or excerpts from a letter here, Doctor, that Mr. Green wrote to his girlfriend about 20 years ago while in the penitentiary where he said, I'm currently attending college to get my associate's and to hopefully start on my second degree before my time of release is up. Did you read that?
A. Yes, I did just read that recently.
Q. Now, you also administered cognitive -- ability tests; is that correct?
A. That is correct.
Q. And you told us that you administered the Trails A and B test; is that right?
A. That is correct.
Q. And before we get to that, did you also utilize certain psychological techniques to help you in your -- developing your opinions?
A. Psychological techniques? Do you mean the use of psychological tests?
Q. Specifically, did you utilize a draw a person technique?
A. Yes, I -- I administered that, but I -- I did not rely heavily on that for my opinion.

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Q. Can you pull that out of your file, your neuropsych testing and --
A. Yes.
Q. While you're at it, did you have him draw a family technique, as well?
A. Yes.
Q. Is that the Trail 8 there?
A. Yes.
Q. Kind of keep that open.
A. Uh-huh.
Q. And you had Gary Green draw a person; is that correct?
A. That is correct.
Q. And that was part of your psychological testing?
A. Correct.
MR. HEALY: Judge, can you dim the lights, please?
Q. (BY MR. BEACH) And this is the person that Gary Green drew during your neuropsychological testing of him; is that correct?
A. That's correct.
Q. You've seen the Timberlawn records; is that -- is that right?
A. Yes, I have.
Q. And one of the Timberlawn records they have -- they

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have -- a certain five or six faces from smiling all the way to frowning about how much pain he's in; is that correct?

A. I believe so, yes.

Q. And at least as of that day, the best of pain was 3 out of 5; is that correct? Can you see that? Can you look, Doctor, there's a TV screen right there by your right hand -- by your right hand.

A. Okay. By my right hand.

JUROR: No, down.

Q. (BY MR. BEACH) Other right.

JUROR: That's your left hand.

Q. (BY MR. BEACH) There you go.

A. I need testing.

Q. We all do.

3 out of 5; is that correct?

A. Okay. Let's see here. Current pain scale rating. It does say 3 out of 5 there, yes.

Q. Point to the -- the face which demonstrates the 3 out of 5.

A. Okay. Do I point to it up here?

Q. Right there on the screen, just touch -- just touch it with your hand or use that pointer there.

A. Oh, this -- this screen here?

Q. Yes.

COURT REPORTER: No, no.

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Q. (BY MR. BEACH) That screen -- that screen right there.

MR. JOHNSON: Bottom one.

A. Bottom one, okay. This one right here?

Q. (BY MR. BEACH) There you go. Perfect.

A. Okay.

Q. That's the 3 out of 5?

A. I believe so. That one says 3 severe pain.

Q. Okay. And -- all right. That's good. Then you also had Mr. Green draw a -- draw a family; is that correct?

A. That is correct.

Q. And this is Mr. Green's effort to do that?

A. Yes.

Q. And although you do not rely on these techniques heavily, they did factor some -- somewhat into your -- your opinions?

A. These are referred to as projective tests, and they do some standardization.

Q. Okay.

A. But I -- I do not use that standardization. What I mainly use these measures for is just to see -- to get a rough idea of a person's perceptual ability, how they organize information and things like that visually. I don't use them in the traditional sense where I try to read a lot into what caused them to draw people a certain way or what caused -- you

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know, other psychologists do in different contexts, but I don't use them that way.

Q. Now -- I'm sorry --

A. Different tests can be used -- I'm sorry.

Q. I'm sorry.

A. -- different tests can be used in different ways by psychologists, and I just give these -- they're sort of like auxiliary measures that I don't rely on very much unless there's something really unusual about them.

Q. You also administered the Trails A cognitive test; is that correct?

A. That is correct.

Q. And do you have that with you?

A. Yes, I do.

Q. Can I can get that displayed? You're familiar with where the TV screen is now?

A. Yes, I think so. I might miss it.

Q. All right. What are you trying to get Mr. Green to do on this -- on this test?

A. This test is a measure of psychomotor speed and mental tracking, so basically what the person does is connect the numbers in order beginning with number 1. And this is the sample. It's the practice part. And then the following page has the actual test. And it's a measure of how fast their psychomotor speed is and how fast their tracking is.

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Q. And Mr. Green was able to complete that exercise without any errors; is that correct?

A. That's correct.

Q. And the 34 up there, in the upper right, what does that signify?

A. That it took him 34 seconds to complete it.

Q. Is that within average range?

A. That's within the average range, yes.

Q. Now, you have the Trails B test, as well.

A. That should be on the --

Q. The other side of that.

A. -- the third page is where that would start, I think. The -- the second page there is actually going to be the actual Trails A test.

MR. JOHNSON: Judge, excuse me. I don't believe these -- I don't have any objection. I don't believe any of these documents have been offered or admitted. Am I incorrect on that?

MR. BEACH: No, you're not incorrect.

THE COURT: No, they need to be admitted.

MR. JOHNSON: We need to do something so they -- for the purposes of the record.

THE COURT: Yeah. Go ahead and mark them.

MR. BEACH: He wants his originals back. Does he need the originals back?

A. That's the only copy that I have. That is Trails A, the actual test.

(Discussion off the record.)

Q. (BY MR. BEACH) That's the actual Trails B.

A. That is Trails B; that's correct.

(Discussion off the record.)

MR. BEACH: At this time, Judge, we would offer into evidence State's Exhibits 161 through 165, inclusive, and we would agree to make copies -- substitute the copies for the record so the Doctor can have his originals back.

(State's Exhibits 161 through 165 offered.)

MR. JOHNSON: We would have no objection.

THE COURT: They are admitted.

(State's Exhibits 161 through 165 admitted.)

Q. (BY MR. BEACH) Going back to State's 164, Doctor, this is the actual Trails A test; is that correct?

A. That's -- yes, that is correct.

Q. So you start at 1 and go all the way to the end; is that correct?

A. That is correct.

Q. And State's 165 is the Trails B test?

A. Yes, correct.

Q. And what are you trying to see if Mr. Green can do on this neuropsych test?

A. This one is actually similar to Trails A in that

it -- it tests for psychomotor speed and mental tracking, but in this one, as you can see, the subject has to alternate between letters and numbers and so there's a mental shifting component. In other words, he has to shift his thinking from numbers to alphabet, and he has to do this as quickly as he can. So it's measuring his -- the speed of his mental shifting, as well.

Q. And is the Trails B test thought of as a test for higher level cognitive ability?

A. Yes, to an extent. It is -- it is thought of as a test of what's called executive functioning, mental shifting. It's not -- obviously, not a test of complex thinking or anything like that. It's more of a mental shifting test.

Q. And was Mr. Green able to complete the Trails B test without error?

A. Yes, I believe so.

Q. Can you move it down a little bit?

A. Yes, he completed it without errors.

Q. And the time that he completed it in, was that within the average range?

A. It's within -- yes, it's -- he fell in the 15th to 25th percentile which is -- sort of like the low average to average range.

Q. All right. Thank you.

A. Yes.

Q. And we'll get you your originals back here.

A. Thank you.

Q. Okay. So you were not provided -- strike that.

You testified on direct -- the more information that you had available to you prior to conducting your neuropsych test, the better off you were going to be; is that correct?

A. A neuropsychologist always wants to get as much information as possible before making a diagnosis, but we are under some constraints sometimes.

Q. Well, Mr. Green, as you know, spent ten years in the penitentiary from 1990 to 2000 on an aggravated robbery offense. You were not provided with his penitentiary records, whether it was his parole records or medical, psychological records for that ten-year stay?

A. That is correct.

Q. And would it surprise you that nowhere in Mr. Green's penitentiary records during that ten-year time frame was he ever diagnosed with any kind of mental illness?

A. It would -- it would surprise me in a sense, but it wouldn't be surprise me because it's not uncommon for people in prisons, is my understanding, to not get care for mental health. So I guess -- I guess I would be a little bit surprised, but not too surprised.

Q. I mean, he was -- he was treated for stress

management, had some insomnia and anxiety and stress, but never was diagnosed with any kind of either mental illness -- with any kind of mental illness; that wouldn't surprise you?

A. It would -- it would be the same answer. I would be a little surprised, but I wouldn't expect it to be outside of the realm of possibilities.

Q. Now, you also were provided Mr. Green's Parkland jail and health records; is that correct?

A. Yes.

Q. Okay. And in those records, we have records going back to 2006 where Mr. Green was in the Dallas County Jail. Do you recall that?

A. Yes.

Q. And let's just start with '06 to '08. Did you see anywhere in there -- in those records where Mr. Green was diagnosed with schizoaffective or any other kind of mental illness?

A. I do not recall seeing that.

Q. In the 2008 records, it does state that Mr. Green used marijuana on a daily basis. Do you recall seeing that?

A. I do recall seeing that, yes.

Q. And an individual that uses marijuana on a daily basis, combined with morbid obesity, combined with very high blood pressure, that could lead to depressive looking symptoms, couldn't it?

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A. No, not -- not necessarily. I -- I wouldn't be able to answer yes to that question.
Q. I'm not asking -- it can, though?
A. I -- I don't really know how to answer that question. Obesity can be linked to depression. Hypertension in itself is not directly associated with depression that I know of. And -- and chronic marijuana use can contribute to depressed affect in some people or it can contribute to the opposite in others.
Q. Can't it make you apathetic, it kind of look like you have flat affect and make you want to sit on the couch and play video games, too; is that correct?
A. That -- that can happen in some people, and so I guess the answer would be yes, but not everybody.
Q. Now, you've also -- you were shown extensively the Timberlawn records while you were testifying on direct, and, again, you would agree with me that the psychiatrist out at Timberlawn did not diagnose Mr. Green with schizoid-affective disorder; is that correct?
A. That is correct.
Q. And he was there for four and a half days?
A. I believe so, yes.
Q. That's longer than seven hours that you spent with him; is that correct?
A. That's correct.

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Q. And we've gone through the -- the complaints -- and, again, this is a situation where Gary Green wasn't taken kicking and screaming in a straightjacket to Timberlawn, was he?
A. I -- I believe that he checked himself in is what the records reflect.
Q. He drove himself down there and checked himself in; is that correct?
A. I believe so, yes.
Q. And I'm -- I'm not remembering, Doctor. When you talked about your credentials and your experience, you just do some work on the civil side; is that correct?
A. I do some work on the civil -- most of my practice is clinical. And then a percentage of my practice is -- is -- involved in evaluating people in civil litigation, and then a very small percentage is in death penalty and capital murder cases.
Q. Civil litigation, car wrecks, head -- closed head injuries, you do neuropsych tests and come in and tell a jury a guy, you know, is messed up to the tune of $10 or $500,000 -- I mean, you don't make them -- but you're coming in to try to tell a jury if he's hurt or not; is that correct?
A. Yes. I'm not a life care planner, so I don't -- I usually don't talk too much about dollar amounts. I just --
Q. I understand. I understand.

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A. -- evaluate people to see if they have mental problems.
Q. Have you ever done any work in the Social Security income disability arena?
A. Very little. We -- we don't do that -- that much work with that. Occasionally I've evaluated a few people, but there are some people that specialize in that and do a lot of work in that and I -- I don't.
Q. Do you know one way or the other, Doctor, if -- if you're awarded Social Security income disability from the government, if that is exempt from being garnished for child support?
A. That, I do not know. I don't know about that.
Q. And Mr. Johnson asked you -- I know it's tongue in cheek, but there was nowhere in the Timberlawn records where Gary Green walked in and stood in front of the admissions desk and said, I'm here for a crazy check. There's nothing in the records about that, is there?
A. I don't recall seeing that.
Q. I'm guessing if he did say that, that they probably would not have admitted him?
A. I -- I really can't speak for what they would have done or not done at that point.
Q. You talked about the symptoms, the conditions that Gary Green self reported once he was admitted to Timberlawn; is

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that correct?
A. Yes, I -- I believe we reviewed that.
Q. Trouble sleeping, racing thoughts, you know, depression, those kinds of things; is that correct?
A. Correct.
Q. He's also complaining that he just was kind of tired of life, wanted to die, just wanted to go on with it; is that correct?
A. That's correct. That's my impression.
Q. And as a result of that, they placed Mr. Green on what's called close observation; is that correct?
A. Yes.
Q. That wouldn't surprise you when a patient comes in, is talking about killing himself, they've got liability so they're going to make sure that they keep a close eye on a fellow that's talking about killing himself while he's inside their perimeter?
A. I'm sure they have policies and procedures for how they handle those circumstances that they have to follow.
Q. Okay. And in the Timberlawn records -- and the jury can see -- see them if they want to -- I mean, they're monitoring him every 15 minutes 24 hours a day; is that correct?
A. I -- I don't know if it was that much, but I know -- I do know, though, that in -- that in those settings they do

monitor people pretty regularly.

Q. I'm showing you what's been admitted as State's Exhibit 145, Doctor. Just for example here, we've got a flow sheet; is that correct?

A. Yes.

Q. And it's got different codes about what's going on in 15-minute intervals all the way throughout the day; is that correct?

A. That's correct.

Q. Okay. And if you look at P, what's that a code for?

A. Sleeping.

Q. Sleeping. And 4 is where he's sleeping; is that right?

A. Yes.

Q. So every 15 minutes the staff is coming in to make sure that Gary Green is sleeping in his room?

A. It looks like that's what they're coding there, yes.

Q. So from midnight on the 22nd, all the way to at least 7:45 that morning, Mr. Green at least is -- denoted in the flow sheet as sleeping in his room?

A. It appears that way, yes.

Q. Let's see if we can go back to the day before and see if Mr. Green went beddy-bye before that. It looks like he went to sleep that night around 2200 -- be what, 10 o'clock?

A. Yes.

Q. So from 10 o'clock the night before until 7:45 that next morning, this man that's having trouble sleeping is sleeping?

A. That's -- that appears to be what's documented there, yes.

Q. And he spends four and a half days there and checks himself out; is that correct?

A. That was my understanding, yes.

Q. And when he checks himself out, there's a discharge diagnosis?

A. Yes.

Q. Okay. And that discharge diagnosis was depression?

A. Yes, it was depression with psychotic features and a rule out of bipolar.

Q. The psychotic features were he was talking about killing himself?

A. The psychotic features probably refers to him -- him having delusions that people are trying to harm him or hurt him that were alluded to in the initial intake.

Q. And then you've also -- then once he's taken into custody for the murders of his wife and his stepdaughter, he's brought back to Parkland. You've seen those records; is that correct?

A. Yes, I have, recently.

Q. And he's been in the jail here since September 22nd

of last year?

A. I believe, so, yes.

Q. And you've reviewed all those records, including his mental health records up in the jail; is that correct?

A. Yes, I've reviewed them briefly since I've been here.

Q. And are you surprised that nowhere in the Parkland records since September 22nd of last year was Mr. Green diagnosed with any kind of mental illness?

A. Again, it is a little surprising, but unless somebody does a thorough, comprehensive psychological assessment of Mr. Green, they're probably not going to have enough information to provide a thorough diagnosis. So I'm not fully surprised.

Q. Actually -- I mean, he has been diagnosed with some kind of disorder. He's been diagnosed with adjustment disorder; is that correct?

A. I believe I remember seeing that in the records, yes.

Q. And he's being treated right now with an antihistamine, an antihypertension medication, and an antidepressant; is that correct?

A. Yes.

Q. Okay. Can you tell the members on the jury what is the most commonly prescribed category of medication currently

going on here in the United States?

A. I'm not a physician, and so I really don't know the answer to that question, unless -- unless, you know, I guess it would be antidepressant medication.

Q. That's where I'm going. That's the most --

A. I have a lay -- lay knowledge of that. I mean, as psychologists, we work with medication, but we try not to get too involved in it.

Q. And you've told us your concerns with Mr. Green's -- his cognitive limitations and his intellectual low average to even below that; is that correct?

A. Can you rephrase the question?

Q. You told us on direct about your opinions and -- concerning his intellectual capabilities, as well as his cognitive limitations?

A. Yes, I did.

Q. Showing you a page from his Parkland jail records, pointing right here, can you read that part about where he generally talks about people judging others and is very philosophical and analytical. He asked for a magazine in our last discussion, Psychology Today?

A. Correct.

Q. So Mr. Green is up there reading Psychology Today in the jail, or he's asking for it?

A. It sounds like he was, yes.

Q. And for the -- I mean, just for the jury's benefit, what is adjustment disorder?

A. Adjustment disorder is -- it's a diagnosis that's used when somebody is having emotional problems and reaction to something. In other words, they're having difficulty adjusting emotionally to a loss or a death or a stressful situation. It has to occur for a certain length of time, and -- and it has to not meet criteria for a depressive disorder or other emotional disorder at that time. In other words, it doesn't fully meet the criteria for depression, but the person is having some emotional problems adjusting to something.

Q. An adjustment disorder, Doctor, is not a severe mental illness, is it?

A. In most people it is not. It can become chronic and severe in some people, but generally it's a -- it's in response to stressors and it's not considered as severe as major depressive disorder or schizophrenia or schizoaffective disorder.

Q. And if you're a diehard Texas Ranger fan, there might be some adjustment disorder issues going on right now that may linger, you know, in the next week, maybe the next month; is that right?

A. They're going to kick up the numbers on the antidepressant medication.

Q. There you go. Doctor, the best I can tell in the

seven hours you spent with Mr. Green, you are the only human being here on this earth in his over 20 years now in and out of the jail system, going to Timberlawn, that's ever diagnosed him with a severe mental illness. Would you agree with me?

A. No. Did you say except Timberlawn?

Q. Yes.

A. Okay. It appears to be from the records that I have that he's never been diagnosed with a severe mental illness; that's correct, except for Timberlawn.

Q. And do you know whether or not Mr. Green did, in fact, as soon as he left Timberlawn, put in his application for Social Security income disability?

A. I -- I remember hearing that somewhere or reading that somewhere recently, so -- so I guess the answer would be, yes, I believe so, but I'm not sure.

Q. Now, we talked to you -- today is Thursday, right?

A. Yes.

Q. We talked to you Tuesday afternoon; is that correct?

A. That's correct.

Q. And that was outside the presence of the jury; is that right?

A. That's correct.

Q. And we were able to elicit what opinions you had formed as of Tuesday afternoon; is that correct?

A. That's correct.

Q. And you told us Tuesday afternoon under oath that you did not think Gary Green met the antisocial personality disorder criteria; is that correct?

A. That's correct.

Q. And let's just start with -- the antisocial personality disorder criteria; they're found in the DSM-IV; is that correct?

A. That's correct.

Q. Tell the folks of the jury what the DSM-IV is.

A. The DSM-IV is the Diagnostic and Statistical Manual of Mental Disorders. It's basically the reference book that most mental health clinicians, psychiatrists, psychologists, school counselors and so forth, use to diagnose and classify and categorize the mental disorders and behavioral disorders that people have. So in other words, it's the reference book that everybody looks at that tells you how to diagnose people and what's required to diagnose somebody.

Q. And just give me ballpark. How many -- in the year 2010 now, how many different clinical diagnoses are in the DSM-IV?

A. Oh, boy.

Q. Hundreds?

A. Yeah, probably. Yeah, maybe -- maybe over a hundred. If you break up all the subcategories and things like that, it will probably be in the hundreds.

Q. And do you know when the first DSM was -- was published?

A. I think the first DSM was published -- maybe in 1952. There was obviously a I, a II, a III, a IV. Then there's been a text revision in 2000, and then the V is coming out in 2013. I know that's more than what you asked, but that's my understanding of the time line.

Q. So depending on what you believe, for 3000 years, the world operated without any kind of DSM; is that correct?

A. Yes, I believe so.

Q. Okay. And that means there wasn't anything called schizo -- schizoid-affective before 1952?

A. It hadn't been labeled, and I think actually schizoaffective came later than that, so it's probably in the version III or IV, so probably not until the 1980's or 90's is when schizoaffective became to be understood.

Q. Did you -- agree with me, Doctor, there are just some -- just mean people in the world?

A. Yes.

Q. Mean people without any kind of severe mental illness?

A. Yes. Those people would be antisocial, uh-huh.

Q. Mean people who are capable of doing just hideous, monstrous acts; is that correct?

A. We see -- we see it every day in the news,

unfortunately, yes.
Q. And if one of those really mean people walks into your office -- into your clinical practice and says, Doc, I'm just a mean, lazy, son of a gun, I need you to treat me --
A. Uh-huh.
Q. -- could you bill an insurance company for that?
A. Could I bill an insurance company for -- for that? Well, we -- we would have to figure out what was really wrong with the person, you know, and -- and depending on what's really wrong with them, then, you know, some of the -- some of the things are covered by insurance and some of them aren't.
Q. But you can't bill an insurance for somebody that's just mean, can you?
A. For somebody who's just mean?
Q. Right.
A. Well, if the person is having interpersonal problems as a result of their behavior -- in other words, they have a behavior problem or a personality disorder that causes them to be mean and to have problems in their relationships with other people, actually a lot of insurance companies will pay for that -- will pay for therapy for that.
Q. You can't -- you can't write the insurance company and say, this guy is just mean. You've got to have one of those clinical diagnoses to reference before they're going to pay you, right?

A. Well, if you say a guy is just mean, then it would show that you don't have the training and experience in order to be able to interpret the person's real problems.
Q. Okay. You told us that if they are just plain mean, that would correlate to be -- being antisocial; is that correct?
A. Well, that would be one -- a lay person's description of a behavior of somebody who might be antisocial, yes.
Q. Let's talk about the clinical or the DSM-IV criteria for antisocial personality disorder.
A. Okay.
Q. The first thing you've got to be able to show is --
MR. BEACH: Judge, I'm sorry.
Q. (BY MR. BEACH) There's evidence of conduct disorder with onset before age 15; is that correct?
A. Yes, but that's not the first thing. Are we missing the first part?
Q. I want to start -- we'll go -- we'll go to --
A. Okay. So we're going to go --
Q. -- 15 after this.
A. Go in reverse. Okay.
Q. I want to take it chronologically.
A. Okay.
Q. So you've got to have evidence of conduct disorder

with onset before age 15?
A. Yes.
Q. And do we have that in this case?
A. Again, I didn't have all of the information that I needed, but -- but as -- as I sit here and learn more about Mr. Green's behavior, it does appear that he had conduct problems before age 15, so I'm a little uncomfortable saying yes for sure, because I'm not an expert in that area either and I don't evaluate to an in depth extent, but it does appear that there were some problems with conduct.
Q. Doctor, I'm going to show you what's been marked for identification as State's 165, and are you familiar with State's 165?
A. Yes, I am.
COURT REPORTER: Oh, I'm sorry. It needs to be 167.
(Discussion off the record.)
Q. (BY MR. BEACH) We'll start over.
A. Okay.
Q. Showing you what's been marked as State's Exhibit Number 166. Are you familiar with State's 166?
A. Yes, I believe so.
Q. Is this information that was supplied to you by Kelly Goodness who was working for the Defendant in this case?
A. Yes.

Q. And that was supplied to you back in January of 2010?
A. That's correct.
Q. And you've reviewed the contents of State's 166?
A. Yes, I have.
Q. And did they help you in forming your opinions in this case?
A. Well, that was a letter -- the referring letter that specified what I was being asked to do in this case.
Q. Also, with her summaries of interviews contained -- attached to your matching orders, basically?
A. Yes, the -- the first two pages are the referral letter asking me what to do, and the -- it looks like the next six pages after that are -- is some of the information that was provided to me from Dr. Goodness's office regarding interviews and history for the subject that was to be interviewed.
Q. And you relied on those interview summaries; is that correct?
A. That is correct.
MR. BEACH: We'd offer State's 166 at this time, Your Honor.
(State's Exhibit 166 offered.)
MR. JOHNSON: No objection.
THE COURT: It's admitted.
(State's Exhibit 166 admitted.)

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Q. (BY MR. BEACH) As part of the interview summaries provided to you by Dr. Goodness -- and she's -- she's here in the courtroom today, the lady in the front row with the dark hair; is that correct?
A. That's correct.
Q. And she's also a psychologist here in the Metroplex?
A. Yes.
Q. Apparently the Defendant's brother, Nysasno Carter, was interviewed. Are you aware of that?
A. Yes, I am.
Q. You've also talked to him in person; is that right?
A. Yes, I talked to him over the telephone.
Q. You see that highlighted area there?
A. Yes.
Q. Mr. Carter reported that the Defendant and he had two dogs together as children, and Mr. Green and a friend Marcus set fire to the dogs; is that correct?
A. That's correct.
Q. Now, would that help you in making your determination as to whether or not Mr. Green exhibited conduct order behavior just before age 15?
A. Yes, I would be interested to know whether that was due to psychosis or whether --
Q. I didn't ask you what it was due to. Would that help you in -- in --

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A. It would be an important piece of information, yes.
Q. Cruelty to animals by individuals before age 15, that's a big one, isn't it?
A. That is a symptom that is exhibited by children with conduct disorder; that's correct.
Q. And, also, I guess you've learned either here in the courtroom or from other additional records that Mr. Green had truancy issues; is that correct?
A. That's my understanding, yes.
Q. That he began smoking marijuana at age 12 which is a violation of the criminal law; is that correct?
A. Yes.
Q. So you would agree with me that Mr. Green has exhibited behavior of conduct disorder before age 15?
A. Yes.
Q. So that criteria -- criterion is met?
A. There is evidence for that criteria, yes.
Q. Now, let's go to the part that you were talking about. We have to find three of the following -- yeah, three of -- yeah, we'll take it back a little bit -- the following categories within -- to conclude your -- your diagnosis as to antisocial personality disorder; is that correct?
A. That's correct.
Q. The first is failure to conform to social norms with respect to lawful behaviors as indicated by repeatedly

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performing acts for grounds for arrest. No question Mr. Green, he aces that -- that first criteria?
A. Yes.
Q. Deceitfulness is indicated by lying, use of alias, or conning others for personal profit or pleasure. Do you have any evidence of that?
A. I -- I didn't have specific evidence of that, and -- when I conducted by assessment and -- and I can't think of any right now. I guess I'm just not sure.
Q. I want you assume with me, Doctor, that Mr. Green did go through that exercise at Timberlawn to start the process of -- of obtaining money from the government, okay? I want you to assume with me that that's a truism, okay?
A. Okay.
MR. JOHNSON: Judge, I object to that because there's absolutely no evidence of that -- that being a factor. That's assuming facts not in evidence, not proven by any testimony in the case.
MR. BEACH: I'm just setting up my hypothetical, Judge.
THE COURT: Well, call it a hypothetical rather than a truism. That's -- that's not -- call it a hypothetical.
Q. (BY MR. BEACH) That's why I said to assume it. But, yeah, consider this a hypothetical. That's why he went to Timberlawn, okay?

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A. Okay.
Q. And that would be to -- for his personal profit -- I mean, if he was going to get a check from the government, that's something that -- if he went there to lie about that and set that up, that would be for his personal profit?
A. If a -- if a person faked having psychiatric symptoms and checked themselves into a psychiatric hospital for five days for personal profit, yes, that would be a pretty major lie -- attempt to lie.
Q. And you reviewed the Timberlawn records; is that correct?
A. Yes, I have.
Q. And one of the things that Mr. Green was claiming in the Timberlawn records is he had been sexually abused as a child; is that right?
A. That is correct.
Q. He also claimed that he was laid off of his job a month before at Timberlawn; is that correct?
A. I -- I believe so. I don't remember all of the details off the top of my head, but that sounds reasonable.
Q. And if Mr. Green was not laid off, but if he just voluntarily quit his job, that would be a lie; is that right?
A. If he said he was laid off, but he really quit his job, then, yes, that would be a -- an untruth.
Q. Patient told that he was sexually molested by his

aunt, mother's sister, when he was three years old, and he never told anyone except his mother when he was age 17. His mom told him he was most likely mistaken, and he has never mentioned it again. That's in the Timberlawn records. Do you recall that?

A. I recall reading something about that, and he told me the same thing in my interview with him.

Q. You were sitting in here yesterday when Gary Green's mother testified; is that right?

A. Yes.

Q. And Gary Green's mother testified under oath that was all news to her, she had never heard anything about Gary coming to her saying that he had been sexually abused by one of her sisters?

A. I believe that's what she testified to, yes.

Q. So if you believe her, Gary is lying at Timberlawn about something, I guess, that's causing him stress?

A. I would suppose so, yes. There's some inconsistency there.

Q. Number three, impulsivity or failure to plan ahead. He's all over that one, isn't he?

A. When I -- when I evaluated him, I didn't see a lot of evidence for impulsivity during the assessment, but usually people with criminal histories do have problems with impulsivity.

Q. Irritability and aggressiveness as indicated by repeated physical fights or assaults. And we've heard about how he treated his girlfriends and --

A. Yes. There -- there's evidence for that in his history.

Q. Reckless disregard for safety of self or others?

A. Yes, obviously, there's record of that in his history, as well.

Q. Consistent irresponsibility as indicated by repeated failure to sustain consistent work behavior or honor financial obligations?

A. That -- there was -- there was some allusions to that in the information that I've had so far. It wouldn't surprise me.

Q. Okay. And finally, lack of remorse as indicated by being indifferent to or rationalizing, having hurt, mistreated, or stolen from another. There's certainly evidence of that; is that correct?

A. That was something that I -- that I had questions about in my clinical -- in developing my clinical opinions regarding the Defendant because it seemed like Mr. Green was -- when I -- when I was speaking with him at least, I felt like he was being -- like he did have some remorse, or at least he was expressing remorse. And so -- so, you know, people who don't have any remorse, they typically not -- don't get depressed by

their behavior, the things that they do, they don't brood on it, they forget about it, and they move on. And it seems like Mr. Green was thinking about things a lot and brooding over things. So -- so I'm not sure about that one on -- from what I've seen.

Q. Well, I mean, the first step in true remorse is accepting responsibility. Wouldn't you agree with me?

A. Yes, sure.

Q. So if he's telling his mother and his brother that, you know, his wife came at him with the knife and somehow he was able to miraculously get the knife away from her and start stabbing at her and then the wife picked up the baby and then that's how the baby got stabbed, that wouldn't be accepting responsibility, would it?

A. Well, we're kind of getting into an area that I'm not an expert in, you know. And so I -- I didn't really do that much of an assessment regarding that. So I guess I should be a little more careful about talking about actual remorse and things like that.

Q. Now --

A. I -- I haven't seen a lot of evidence for a lack of remorse, but it wouldn't surprise me if it's there.

Q. You read the five and a half page letter that Mr. Green wrote to his wife right before he murdered her and the --

A. Yes, I did.

Q. Where he's talking about he's the victim?

A. Yes.

Q. It's all her fault?

A. Yes.

Q. Because she wanted to put him out?

A. I believe so, yes.

Q. Finally, Doctor, your marching orders from Kelly Goodness included not to discuss the alleged offense with the Defendant; is that correct?

A. That's correct.

Q. So you didn't talk to the Defendant about the crime itself?

A. That's correct.

Q. You were not provided by the defense, for instance, the videotaped hour and a half confession taken within 12 hours of the murder of Mr. Green?

A. No, I was not provided that.

Q. You didn't ask for that?

A. I did not.

Q. You didn't think that would help you in forming your opinions as to whether or not Mr. Green had a mental -- mental illness?

A. I was -- I was asked -- the referral question was to evaluate him without any reference to the crime. And so I wasn't allowed to have that information, and I did not require

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it because I agreed to evaluate him without reference to the crime. I'm not a forensic psychologist.

Q. What does forensic psychology mean?

A. Forensic psychology is the study of all the mental aspects of -- of criminality and the law. For example, a forensic psychologist can specialize in things like future dangerous or culpability or insanity, whether somebody was -- knew right from wrong at the time that they committed an offense. It's a very specialized area that people need training and experience in order to be able to conduct. I'm a clinical neuropsychologist. My job is to diagnose people with mental conditions and mental disorders, but I do very little legal work, and I don't have extensive training and experience in it, as you can probably tell.

Q. We're here in a courtroom today, though, right?

A. Yes, we are.

Q. It doesn't get any more forensic than being here in the punishment phase of a death penalty case, does it?

A. It's pretty intense for me.

Q. You're telling these folks that you're not here to offer any opinion as to whether or not Mr. Green's so-called schizoid-affective severe mental illness had anything to do with what happened on September 21st, 2009?

A. That is correct. I'm just saying that he's -- that he's mentally ill. I'm not saying that that's what caused him

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to do that.

Q. And how much an hour are we paying you to come in here and say that?

A. I don't know yet. I -- I haven't determined how much I bill, but I -- I would imagine it's going to be something like around $200 an hour or something like that.

Q. You don't have a standard rate?

A. I don't have a standard rate. I don't do this often enough and haven't really developed one yet for this. I -- I do have a standard rate for -- for my civil work, but I haven't figured out what the Court will pay me to come here.

Q. It's a heck of a lot more intense than a car wreck case, isn't it?

A. It's a lot more intense, yeah. But -- but I don't think I'm going to get paid as much as I do in those cases.

Q. And you've met Randy Price; is that correct?

A. Yes, I have. I've met Dr. Price.

Q. And he's -- is he still here? Okay. He's sitting here in the front row in the brown tie.

A. Yes.

Q. And he's a board certified forensic psychologist?

A. I -- I believe so. I -- I don't really know very much about his training and certification.

Q. And he's up here in the Dallas area; is that right?

A. That is correct, I do know that.

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Q. Doctor, do you have any idea why Kelly Goodness had to go all the way to San Antonio to find an expert to come in here and say that Mr. Green had a severe mental illness?

A. Well, people in my field, we -- there aren't very many of us around that work in the public sector. And, for example, in San Antonio, there's maybe about four people that do what I do. And a lot of them won't take legal work because of all of this. I've been here for three days now, and all of my patients -- I've had to reschedule and things like that, so I would assume it's a similar situation here in Dallas where it's hard to find a neuropsychologist who is willing to take the time to do this, and also to be put up on the stand and questioned like this and so forth. You know, there's not very many neuropsychologists that are willing to do that.

Q. Would you be surprised, Doctor, there are approximately 20 full-time forensic psychologists here in the Metroplex that do this for a living full time?

A. I wouldn't be surprised. Dallas is a pretty big area.

MR. BEACH: I appreciate your patience with me. And I'll pass the witness, Judge.

THE WITNESS: Okay. Thank you.

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q. Doctor, the last question Mr. Beach just asked you,

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I guess he's still confused about the terminology. He's talking about forensic psychologists. We're talking about neuropsychology, are we not?

A. That's what I believed we were talking about, yes.

Q. Okay. When he asked about how many forensic psychologists are in -- in Dallas, that has nothing to do with the amount of neuropsychologists that are even within the State of Texas that are willing to take on these kind of diagnoses; is that correct?

A. I would imagine that for neuropsychology, the number is going to be a lot lower than 20. I -- I don't think that there would be that many.

Q. Again, there's a lot of people that won't accept any kind of this stuff because of the time that it puts on your practice; is that right?

A. That's correct.

Q. And when we talk about the diagnoses or the -- the referral letter Mr. Beach has alluded to, that's -- you understand what you were asked to do, and that was to find out for evidence of a mental illness?

A. That's correct.

Q. Is there any doubt whatsoever in your mind, sir, that Gary Green is -- has a severe mental illness?

A. No, there's no doubt that he's mentally ill. He is -- he's very mentally ill.

Q. And in fact, as Mr. -- Mr. Beach has gone over some of the symptomatologies of -- of -- that would fit in the criteria to -- for a diagnoses of antisocial personality disorder. That is not something that you were asked to do in particular because ASPD is a behavioral disorder, correct?

A. That's correct.

Q. And behavioral disorder is -- we were asking for you to find evidence of behavioral disorders in context of mental illness; is that correct?

A. That's correct.

Q. Okay. So he's asking you to compare apples to oranges in a way here, is he not, if he's saying that you just ignore one thing. We're asking you to look at -- for the big picture of mental illness.

A. Yes. That's correct, and -- and you really can't separate them all apart. You know, people suffer from comorbidity, and so they suffer from a lot of different mental conditions.

Q. Right. And when he -- and I guess he's -- he's making reference -- he made references to several things here. Let's go through a couple of them. This -- his -- you understand when he talks to you about, do you understand that the Defendant applied for SSDI. Do you remember him -- he mentioned that?

A. Yes, I do remember that.

Q. And you said that you think you have heard that or saw that somewhere here in the last few days?

A. I -- I don't remember specifically. I --

Q. I'm guilty.

A. Okay.

Q. You don't remember me and you talking about it back there that Mr. Beach was going to be questioning you about all of his -- his theories of this case?

A. There's been a lot going on in the last three days, and, yes, I guess I would say that I do remember that.

Q. Okay. So his -- and you understand -- and you understand that as he's questioning you here today, his theory is --

MR. BEACH: Judge, I'm going to object to what my theory is. It's in the -- it's in the evidence that he applied, so I'm going to object to the form of the question. It's an attack on me personally.

THE COURT: Object to the form -- form of the question. Rephrase your question, please.

Q. (BY MR. JOHNSON) When Mr. Beach questioned -- when Mr. Beach asked you about that, sir, did you -- did you understand that to be for a particular reason that he was asking you that question?

A. Okay.

Q. I'll withdraw that for right now.

Let me -- let me go to -- let me go to another point first.

A. Okay.

Q. Do you remember when he asked you about the question about can you bill an insurance company just because a fellow is mean?

A. That was an unusual question, yes.

Q. Do you think maybe that might have something to do with his theory that the only reason that Timberlawn diagnosed him with something was because they wanted to bill the insurance?

MR. BEACH: Same objection to form, Your Honor.

MR. JOHNSON: Judge, I think it's a fair question.

THE COURT: That's overruled.

Q. (BY MR. JOHNSON) Do you think it -- you think it might have anything to do because that's Mr. Beach's theory in this case?

A. Well, you know, it does -- it does seem to be the case that -- that there may have been -- he's trying to present the argument that he was hospitalized for disability. Obviously, anybody can see that, and so -- so I guess the answer would be yes.

Q. Let me ask you something, Doctor. If you think that a fellow was going to go to a mental hospital and check himself

in, do you think if he was looking for a surefire way to get SSDI, that he probably wouldn't (sic) come up with some greater symptoms than what Gary Green is down there describing?

A. Well, I don't think somebody would go to that extent and do it that way. There's a lot easier ways to get Social Security disability, and then also, I don't -- these symptoms are consistent with what I've observed clinically and what's been observed clinically in other places and what his family is reporting, so I -- I -- I guess if we have to use the word "theory," I don't really buy into that theory at all myself personally. I really think that he was having a mental and emotional breakdown at the time and that's why he sought treatment. He was hospitalized for a while. He didn't enjoy the hospital experience and -- and signed himself out which is not unusual in psychiatric hospital type settings. People sign themselves out pretty quick usually, if they go in.

Q. And if you -- if you want to go down there and -- and really paint the case for your crazy check -- I mean, you can paint feces on the wall. You can stand on your head naked. You can do a whole lot better than just telling people that I think the world would be -- it would be a better thing for me if I was dead.

A. I -- I think --

Q. I mean, it seems to be -- it seems to be a minor report of symptomatologies, if it's for the purpose of getting

yourself a crazy check, doesn't it?

A. It would be extremely unusual. I -- I've never seen anything to that extent before --

Q. Okay.

A. -- that way, and so, yeah, I don't think so.

Q. Okay. And, again, when we asked you to do this diagnosis for the purpose of mental illness -- and -- and Timberlawn -- I mean, but apparently from all the records you've reviewed, when Gary Green was at Timberlawn, he saw several psychiatrists, did he not?

A. I believe so, yes.

Q. And these psychiatrists diagnosed him with a severe mental illness; is that correct?

A. That's correct.

Q. Is schizoaffective disorder bipolar type, is that somehow a better mental illness than major depressive disorder?

A. No. There's actually going to be more impairment associated with schizoaffective disorder than there is with simple major depressive order.

Q. Did I come to you and say, Doctor, could you try to beef up this little -- this -- this major depressive order recurrent with psychotic episodes? Did I tell you we needed something a little fancier than that for trial?

A. No, nobody told me to do that.

Q. And Mr. Beach questioned you earlier about these --

about this dichotomy between being diagnosed and treated in an institutional setting.

A. Yes.

Q. And you alluded to that. Would you tell me -- would you tell us again why it doesn't surprise you that when Gary Green is either sitting in the penitentiary or sitting in the jail, that he's not being diagnosed and treated for a recognized mental type of an illness?

MR. BEACH: Judge, wait a second.

THE COURT: I don't understand the question.

MR. BEACH: He's not qualified -- he said he's not a forensic psychologist. How -- how could he answer that?

MR. JOHNSON: Mr. Beach -- No, Mr. Beach asked him if he was surprised he hadn't been diagnosed.

MR. BEACH: Talking about the penitentiary setting, though. That takes specialized expertise apparently that he doesn't have. He's a clinical psychologist.

Q. (BY MR. JOHNSON) Let's do this, then, Doctor. You and I have gone over his prison records; is that correct?

A. Yes.

Q. And you remember awhile ago Mr. Beach told you, well, he was in prison, he may have complained a little bit about a little bit of insomnia and a little bit of stress. Remember him asking you that question?

A. Yes, I do.

Q. I'm going to ask you --

MR. JOHNSON: What number is the TDC records?

(Discussion off the record.)

Q. (BY MR. JOHNSON) Okay. I'm going to show you some portions out of the -- what's been marked and admitted for -- as State's Exhibit 103. I want to talk to you about some -- some of the psychiatric notes from the Defendant while he was in the penitentiary. Do you see where the Defendant is in there and he's being -- there being treated for depression?

A. Yes. It says he was angry and depressed.

Q. Do you -- these are -- these are in different years. Do you see where he's -- can you tell me what he's being treated for in this instance?

A. Yes. On September 20th, 1994, he's having a nervous breakdown, saying no one cares, has been thinking about hurting someone. And I can't -- I can't see --

Q. In the fields?

A. In the fields.

Q. Okay. He's in there having a nervous breakdown, and he's exhibiting the same symptomatologies that you've described; is that correct?

A. Yes.

Q. Can you -- can you read to the jury this other report on a different occasion?

A. On August 19th, 1994, it says he's had thoughts of

killing himself.

Q. Okay. Does he talk about in 1995 that -- become closed off from the rest of the people and says he's going to join the French Foreign Legion?

A. Yes.

Q. Does that make a lot of sense, Doc?

A. No, not really -- not when you're imprisoned for that long.

Q. And -- and he's in there -- and he's in there talking about -- he's in there talking about killing himself. That's a little bit more than a little insomnia, isn't it, Doc?

A. Yes, it is, and I would attribute that to -- and I'm not a forensic psychologist, so I don't know how prison systems work, but I do know from my own personal experience and working in many types of hospitals and clinical settings over the years, that there's different levels of assessment and different standards for assessment. There's certainly a big difference between sort of observing somebody for a few minutes, asking them a few questions, and writing something down, as opposed to doing a more comprehensive assessment that involves testing and evaluating records.

In other words, there's -- you can -- you can, you know, do an X-ray or you can do an MRI. The MRI is going to give you a lot more information than an X-ray. And so -- so, you know, in a lot of these cases I suspect he was just

getting a simple X-ray that really wasn't going to find the tumor, for example, that an MRI would find if you went into a lot more detail and more in depth, you know. Out of all the evaluations that I can see, I'm confident that mine has been the most thorough of any evaluation that's been done with Mr. -- with Mr. Green so far.

Q. And when you were talking about the comparison you were given a moment ago as to the MRI, as opposed to maybe simple X-ray, the prosecutor came to you and showed you a piece of paper stating the Defendant was tested in the penitentiary and they say his I.Q. was 105. You said that absolutely surprised you; is that correct?

A. Yes.

Q. Do you believe that the -- that Gary Green was tested in the penitentiary to the extent of the neuropsychological testing and cognitive testing that you performed upon him?

A. Well, as I mentioned earlier, there's very -- there's -- there's hundreds of different types of I.Q. tests. Some of them will ask you three questions, and if you can answer those, it will give you an I.Q. score, on the internet, for example. So I really need to know what tests was used before I can rely on that -- on that score or comment on that score.

Q. And Mr. Beach asked you about your knowledge at

Timberlawn, and that's a facility here in the Dallas area; is that correct?

A. That's my understanding, yes.

Q. And they know that several of the doctors over there at Timberlawn, when they evaluated him, interviewed him, that they are aware that they all diagnosed Gary Green with a severe mental illness; is that correct?

A. Yes, it has both mood and thought disturbance.

Q. Okay. And so I guess if you were -- if you're going to try to convince -- convince a bunch of people to execute or to put a man to death for something -- for doing something and they disagree with what these people are diagnosing him with, I guess they could call them down here and -- and pick them apart what they diagnosed him with, could they not?

A. I suppose so.

Q. There's -- there's not really -- in regards to being severe mental illness, major depressive disorder is an Axis I diagnosis, the same as schizoaffective; is that correct?

A. And it can be severe in some people, especially once a person gets to where they have psychotic features, and that falls into the severe category; the diagnostic category is major depressive disorder, severe with psychotic features. That's the way that it's supposed to be coded. They coded part of the diagnosis, but they didn't code the number and -- and the actual descriptor on there.

Q. And -- and, Doctor, is there -- is there any doubt whatsoever in your mind as you're sitting here in this courtroom testifying to this jury today that Gary Green is a severely mentally ill man?

A. No, I think there's an overwhelming amount of evidence that he is mentally disturbed and that he is -- that he has a severe mental disorder.

Q. And the prosecutor in his final question to you awhile ago was you can't sit here and say that he did this killing simply because he's mentally ill? You can't say that, can you?

A. I can't -- I can't say anything about why he would kill somebody.

Q. There's not anybody that's going to be able to say exactly why. That's just somebody else's theory, isn't it?

A. I -- I don't know of anybody who can explain why a person would do something like that. It's -- you know, people with expertise can try to explore that, but I don't have that kind of expertise, and I don't really know of anybody who could really tell you.

Q. They may have an opinion?

A. Yes.

Q. Or a theory?

A. Yes.

Q. But opinions and theories are just as good as the

people that formulate them, aren't they?

A. I -- I suppose so, yes.

Q. And I -- they pointed out Dr. Price here; is that correct?

A. Yes.

Q. And he's a fellow that's been feeding them all the letters or the notes --

MR. BEACH: Judge, I'm going to object to the form of the question.

THE COURT: Sustained.

Q. (BY MR. JOHNSON) Well, have you seen him passing notes back up to the prosecutors to hand to Mr. Beach so he can think of things to ask him?

MR. BEACH: I'm sure they're really concerned about him passing me notes. I'm going to object. It's outside the record.

THE COURT: All right. You referenced -- you've referenced their experts, too. What's good for the goose is good for the gander. I think that's in the book somewhere, too.

MR. BEACH: Very good.

A. So, yes, I did observe them pass notes.

Q. (BY MR. JOHNSON) Doctor, I think that's all the questions I have for you at this time. Thank you.

THE COURT: Recross.

RECROSS-EXAMINATION

BY MR. BEACH:

Q. And, Doctor, as you sat in that chair Tuesday, you told me flat out under oath that Gary Green was not antisocial; is that correct?

A. Yes, and I may have --

Q. That's a yes or no. You told me that. He can come back and get you to explain it.

A. Sure. Yes.

Q. You told me that. Sitting in here yesterday, that changed your mind; is that correct?

A. Over the last couple of days sitting in here and reviewing records -- yes, more records -- changed my mind.

Q. And why it's so important, Doctor, is -- I mean, the corner -- one of the cornerstones, linchpins of that antisocial personality disorder is someone who is a deceitful, manipulative, conscienceless individual; is that correct?

A. That's correct, and that's one of my concerns in diagnosing him with antisocial.

Q. And how that plays into this case, when he checks himself into Timberlawn, even though they're professionals, who are they relying on to make that diagnosis?

A. They're relying on their clinical expertise. A psychiatrist -- it's hard to fool a psychiatrist.

Q. Who's giving them the information?

A. They're -- they're -- they're taking an oral history, but they're also observing the patient visually and getting -- making clinical impressions based on what they're seeing in the patient.

Q. Who are they getting the oral history from?

A. From the patient usually.

Q. From Gary Green, the deceitful, manipulative, antisocial personality disorder individual; is that right?

A. "Deceitful" and "manipulative" are terms that people use. I'm a clinician. I -- I don't really think in terms of -- and that wasn't what I was called here to do, so I can't say yes to that because you're -- there's a lot in there that -- that I don't have any mandate to opine on.

MR. BEACH: That's all I have.

FURTHER DIRECT EXAMINATION

BY MR. JOHNSON:

Q. And when Mr. Beach keeps saying the words "deceitful" and "conning", those -- you said a moment ago that those -- that's the aspect, and that's really one of the major cornerstones of any kind of an ASPD diagnosis. There's no clear evidence of that in this record, is there?

A. I don't see clear evidence, and that's one of the problems with a full blown antisocial diagnosis. I will say that as I mentioned earlier, regardless of what -- whether he's antisocial -- and I do believe that he has antisocial traits,

you know -- there's no question about it -- he still has schizoaffective disorder. He still has a severe mental disorder. No matter how many personality disorders he has -- there's 13 of them. He has features of about seven -- six or seven of them probably, if we sat here and looked at each and every one. The mental disorder is still there. It coexists with low intellect and the personality disorder, altogether.

Q. And when Mr. Beach put up his flashcard on the wall that deals with the lack of remorse, lack of the ability to accept responsibility, would it surprise you that the first assault that he's accused of, he actually drove the victim to the hospital and waited there until he was arrested there by the police?

A. I -- I heard about that yesterday, and that's not consistent with a lack of remorse.

Q. How about -- how about going in and robbing a grocery door and getting caught and giving a full confession?

A. Aside from not being a very smart thing to do, that's not what you typically expect an antisocial person to do. An antisocial person usually tries to get away from things, they don't care, they don't feel guilt, they don't feel remorse. Oftentimes they don't feel any depression because they blame all their problems on everybody else, and they're generally pretty happy and charming sometimes.

Q. Okay. And let's talk about that. When you talk

about happy and charming, you're talking about an individual that exhibits -- that -- that visually exhibits signs that he's just a happy-go-lucky, charming person, gets along with everybody?

A. People with antisocial personality disorder, a large percentage of them tend to be really outgoing. They're very social. They trick people. They're very charming. They're sort of like con artists, and -- and so there's definitely a move based on literature to -- to include more of that in the next diagnostic manual, to include more of the behavioral features and the emotional features that go along with a disorder like that.

Q. What about the first time, would you expect a fellow the first time they get in trouble with the law and -- and he runs from the police and they find him and they find some narcs, they find some crack cocaine down laying on the ground, and the Defendant says, yeah, that's my drugs. That's -- that seems to be an acceptance of responsibility, doesn't it?

A. I -- I would assume so. I am getting a little uncomfortable because I mentioned -- I mentioned earlier that I'm not an expert in antisocial and things like that and so I need to probably limit that.

Q. I just want to make sure that when Mr. Beach keeps using -- when he keeps saying deceitful and cunning and failing to accept any responsibility, I just want to make sure it's

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clear that in this courtroom on this day, that's his theory, that's not your assent to his theory, is it?

A. That's correct. I -- I didn't use that terminology, and -- and I haven't seen a lot of evidence for that. My -- my evidence for the antisocial features comes from his criminal history that I've learned about over the last few days.

Q. And the criminal history, in closing, doesn't affect his diagnosis of his mental illness, does it?

A. That is correct.

Q. And that's what we were asked -- that's what you were asked to do so that you could come in and talk, if you found one, and explain that to the people that were going to be making decisions in this case; is that right?

A. That's correct. If I diagnose him with antisocial personality disorder at this point, it does not change any of my other diagnoses. He still has a low average to borderline I.Q. He still has academic dysfunction. He still has schizoaffective disorder with disturbed mood and thought. All of that is exactly the same. There's no changes there. I would just add antisocial features to my personality disorder diagnosis, which I would like to do. That's essentially what I'm doing.

MR. JOHNSON: Thank you, Doctor. That's all I have.

MR. BEACH: That's all I have, Judge.

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THE COURT: Thank you very much. You are free to go.

THE WITNESS: Thank you.

THE COURT: Anybody need a bathroom break?

All right.

THE BAILIFF: All rise.

(Jury excused from courtroom.)

THE BAILIFF: All rise.

(Jury returned to courtroom.)

THE COURT: Thank you all. Please be seated.

Please call your next witness.

MR. JOHNSON: Your Honor, the State calls Nysasno Carter.

THE COURT: Sir, if you would.

(Witness brought forward and sworn.)

THE COURT: Please have a seat.

NYSASNO CARTER,

was called as a witness by the Defendant, and after having been first duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Would you state your name, please, and definitely spell your first name for the court reporter.

A. Nysasno Carter, N-y-s-a-s-n-o.

Q. Okay. Nysasno, how old are you?

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A. Thirty-five.

Q. Okay. Where do you currently live?

A. Mesquite, Texas.

Q. What kind of work do you do, Nysasno?

A. I own a trucking company.

Q. What kind of trucking do y'all do?

A. We haul dry goods.

Q. Okay. How many people do you have working for you over there?

A. Two.

Q. Nysasno, are you the brother of the Defendant in this case, Mr. Gary Green?

A. Yes.

Q. And I think this jury has heard your name quite a few times during the course of this trial. I want to ask you a little bit about -- about yourself growing up. Could you tell the jury where you and Gary were raised?

A. Excuse me?

Q. Could you tell the jury where you and Gary were raised?

A. Dallas, Texas, Pleasant Grove.

Q. Okay. And your mamma is Mary Sampson who testified earlier?

A. Yes.

Q. Your grandma, Bertha Curry, testified earlier?

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A. Yes.

Q. You have an Aunt Shirley Coleman?

A. Yes.

Q. You have a whole bunch of people in your family?

A. Correct.

Q. I mean, there's people splintered out everywhere?

A. Correct.

Q. Did you ever know your father?

A. Not until I got older.

Q. How old were you -- your father -- your father and Gary's father is the same individual?

A. Correct.

Q. What's his name?

A. Thomas Carter.

Q. And how was it that you came to know him later in life?

A. I think I was like nine or ten.

Q. Do you recall -- and your stepfather is who?

A. Leon Sampson.

Q. Could you tell the jury how it was that you and your stepfather got along -- or get along, still?

A. Get along good.

Q. Okay.

A. We --

Q. Leon a good man?

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A. Yes, he is. He's a good father.
Q. And could you tell the jury how Gary and Leon ever got along?
A. They didn't get along as well as me and Leon did.
Q. Okay. Could you -- what was it about him that causes you to say that? What -- what was different?
A. Gary couldn't really -- my dad had a -- owned a remodeling company, and Gary couldn't really cope with learning how to use the tools and what -- things like that.
Q. How did they get along as far as on a personal relationship?
A. They had their good and bad days.
Q. Okay. And did Gary have problems accepting Leon as his father?
A. Yes.
Q. You pretty much -- you considered Leon Sampson to be your father; is that right?
A. Yes.
Q. Did Gary and Leon ever bond in that same way that you and your father bonded?
A. No, sir.
Q. You talked, again, about working in the construction, and a lot of things -- you and I have met on many occasions and we've talked and we talked to different family members. And in that family history of yours, is there all

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different kinds of people in your family?
A. Yes, it is.
Q. When you were growing up, did you have a lot of interaction with those different people?
A. Yes, I did.
Q. And when you said that -- when you and Gary -- part of the things that y'all did growing up was working with your dad. You've described for me before, you've described for my psychologist, you've talked to Dr. Goodness, you've talked to Dr. Martinez, and they've talked to you about all these things that went on back in Gary's background; is that right?
A. Yes.
Q. And you described some of these areas that even in a very early age, problems that Gary had doing things; is that right?
A. Correct.
Q. Give them -- can you give us some examples of those things that you recall?
A. Several incidents as far as in -- on a -- used to work on Saturdays, and Gary didn't know how to use a hammer. And he would -- used to get mad, and he didn't want to go anymore. And then as far as in working on cars, he didn't want to -- he didn't want to -- he put oil in the gas tank and messed it up.
Q. Okay. I mean, did Gary just have problems when he

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was growing up, trying to same things that seemed kind of natural to you?
A. Yes.
Q. Nysasno, let me ask you a question. As you sit here on the witness stand today, do you believe your brother is mentally ill?
A. Yes, I do.
Q. Could you tell the jury how long and how far back you started believing that?
A. Ever since I was little -- years.
Q. Okay. And you -- and you haven't been able to sit in the courtroom because you were going to be a witness in this part. Tell the jury what it is about Gary that even when you were little, that you thought was different about him or what you thought was strange about Gary Green.
A. He used to always talk about death, that he don't have nothing to live for. Used to say that he hear things. He don't believe in God. He don't understand why God got him this way, those type of things.
Q. Why God got him what way?
A. The way that he is, that he don't understand.
Q. How did -- how did Gary get along with his schoolmates?
A. He was off to his self.
Q. Did -- did Gary really ever have a lot of close

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friends or a lot of friends at all?
A. No.
Q. Did you think that was strange?
A. Yes.
Q. Did you -- did you have friends?
A. Yes, I did.
Q. Did you have a lot of friends?
A. Yes, I did.
Q. Did you try -- I mean, how did you and Gary get along?
A. We got along good to -- you know, as brothers.
Q. Did you try to do things to help him?
A. Yes, I did. By me being the baby brother, I did.
Q. Did it seem kind of weird that the baby brother is trying to help the bigger brother?
A. Yes, it did.
Q. Okay. And is that really truthfully been the way it's kind of been your whole life?
A. Yes.
Q. Nysasno, when you said that Gary was always by himself, what -- what about that seemed strange to you?
A. It all seemed strange to me. As far as in -- a young man, you know, want to be by his self, didn't want to play, isolated his self from everybody.
Q. How did Gary do in school?

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A. Such as --
Q. Do you know what kind of grades Gary made in school?
A. He didn't make good grades.
Q. Did you know -- did you know if your mamma was ever aware or did your mamma ever say anything to you about Gary having a problem?
A. No.
Q. Did you ever say anything to your mamma about your concerns in regards to Gary?
A. Yes.
Q. How did she react to that?
A. She kind of brushed me off.
Q. Didn't want to hear it?
A. Yes.
Q. Nysasno, when you look around and you look throughout your extended family tree, is there quite a few folks in your family that have mental problems?
A. Yes.
Q. Is there quite -- is there very many of them willing to admit it?
A. No.
Q. Very many of them getting help for it?
A. Correct.
Q. No, I say are very many of them getting help?
A. No, sir.

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Q. You said earlier that -- that you and Gary were close. Were you close with Gary up to the point wherever he quit high school?
A. Yes.
Q. How old -- what grade was Gary in when he quit high school?
A. I believe it was the 11th grade.
Q. Do you know why he quit?
A. No, sir.
Q. How -- did you know -- do you recall back then as to how Mary and Leon responded in reaction to that?
A. No, sir.
Q. But all of a sudden just one day Gary quit and you don't -- didn't seem to be that big of a deal in the family?
A. Correct.
Q. What about as far as -- did you know Jennifer Alcorn?
A. Know a little, yes.
Q. Okay. And you are familiar that Gary got in trouble for assaulting her, went to the penitentiary?
A. Correct.
Q. How was Gary -- when Gary went to the penitentiary, he was just there for -- for several months for that; is that right?
A. Correct.

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Q. He got out for a couple of months and went back for a robbery?
A. Correct.
Q. Did you have occasion to visit him when he was in the penitentiary?
A. Which time, the first time?
Q. Or either of the two times.
A. Yes, I did.
Q. You see him both the first time he went and the second time?
A. Not the first time.
Q. You didn't see him the first time?
A. No.
Q. Okay. How about the second time, did you have a chance to talk to him?
A. Yes.
Q. And how often would you see him while he was in the penitentiary?
A. Two or three times a month.
Q. You saw him that often?
A. Yes.
Q. As -- as the Defendant got out of the penitentiary, about how old was he when he got out of that penitentiary the second time?
A. I don't recall.

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Q. Okay. Did there come a time whenever you and him got a job together after that?
A. Yes.
Q. Where was y'all working at?
A. Walmart.
Q. Okay. How was Gary acting around that point in time in his life?
A. Acting the same, strange.
Q. Okay. Has Gary ever -- in your way of thinking, has Gary just acted -- been a normal person?
A. No.
Q. I mean, any doubt about that whatsoever?
A. I have my doubts.
Q. No, I'm saying is there any doubt -- when you say you have doubts, do you have any doubts as to whether or not there's something wrong with Gary?
A. Yes, I do.
Q. All right. I think -- I think we may be talking -- using the same word in different ways.
THE COURT: Paul, slow down.
MR. JOHNSON: Okay.
Q. Nysasno, the things that you've seen wrong with Gary, have you ever had occasion to talk to him about those things?
A. Yes.

Q. Tell the -- tell the jury how those conversations came about.

A. When I was on the road driving to 48 states, I used to talk to him, and we would start off talking about something, you know, which state I'm in or something, and he'll say, well --

MR. BEACH: Judge, unless there's some kind of exception, I'm going to have to object to hearsay of what he said.

MR. JOHNSON: I'll -- I'll make -- state it.

Q. (BY MR. JOHNSON) And let me -- let me ask you as far as time frame, when were you driving on the road?

A. Three years ago.

Q. Okay. And -- on the course of your -- the times that you were driving, starting back three years ago, did it come to have conversations with Gary in which he would describe for you certain things in regards to his mental state, his emotional state at the time that he was describing it to you?

A. Yes.

Q. Could you tell the jury what it was that he was talking about in that regard?

A. He was saying he was hearing things. He -- he don't need to -- he doesn't have nothing else to live for. All I used to tell him, he just need to pray.

Q. Why did you tell him he just needed to pray?

A. That's the typical thing that you need to do when you're going through something.

Q. Okay. What about going to see a psychiatrist?

A. Yes, we talked about that.

Q. Okay. Did you ever have any thoughts -- did you talk to Gary about going to a see a psychiatrist?

A. Yes, I did.

Q. This incident that Gary is being convicted of that occurred a year ago, how -- how soon or how far prior to this incident do you recall having conversations with Gary about needing to go -- he needed to go to the hospital?

A. About six months prior to this -- prior to the case.

Q. Okay. And -- and what was it that precipitated or what was it that caused you to start really thinking that he had a real need to go into the hospital?

A. Because he was constantly talking about he was tired. It would just sound like he was really ready to just give up.

Q. Okay. And when he was saying about these voices that he was hearing, what was he describing, or did he ever describe anything in particular about those voices?

A. Just described that he hearing demons.

Q. Okay. Did he say anything about what the demons were telling him to do?

A. No, sir.

Q. And how -- when you were driving the truck throughout the different states, how often were you gone?

A. Weeks at a time.

Q. How often would you talk to Gary?

A. Two or three times a week.

Q. And were you -- how serious were you concerned about what he was describing to you?

A. I was very serious.

Q. Did you ever think about trying to get him committed yourself?

A. Yes, I did.

Q. Did you talk to Gary about that?

A. We talked about it on one occasion, and I told him when I get back in, that we was going to try to go to the doctor.

Q. Okay. But that never came about, did it?

A. No, sir.

Q. Why not?

A. When I came back in, I couldn't get in contact with him.

Q. Whenever these -- whenever this was going on and you were out on the road quite a bit, how often would you actually -- not talking to him on the phone, but how often would you actually see Gary?

A. When I was home, probably twice -- two times if I

was at home, depending on how long I was home.

Q. Okay. Did he talk to you about what he calls -- what he has always called being stressed?

A. Yes.

Q. What -- how did he -- how did he use that term or what did -- what did that mean to you when he talked to you about being stressed?

A. It meant to me, you know, something was wrong, that he was having a major breakdown.

Q. Did that -- is that the way that he always seemed to be?

A. Yes.

Q. Leading up to the time before this incident occurred, do you recall the circumstances for how you became aware of the fact that Gary was in Timberlawn Hospital?

A. Yes.

Q. Tell the jury how that came about.

A. I had called his cell phone one day, and Lovetta answered his phone, said that he was at work. And I thought it was kind of strange that she answered his phone because I know he don't normally leave his phone. And she said when he called back, she would have him to call me. Like 30 minutes later he called me back. The caller I.D. said Timberlawn, and I asked where he was. And he said where he was, said he needed to get some help.

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Q. Okay. What did you think about that?
A. I think that was the best idea.
Q. Okay. Did he tell you he was over there so he could get some -- get some crazy checks?
A. No, sir.
Q. Did -- do you think this was some kind of ruse Gary was going through to try to get some kind of crazy checks?
A. I think he was trying to get some help.
Q. Is that what he told you?
A. Yes.
Q. And you and him had talked about that and discussed it before?
A. Correct.
Q. Was there any doubt in your mind that Gary needed help?
A. A lot of time.
Q. How long was Gary actually in Timberlawn, do you know?
A. I believe three or four days.
Q. Okay. And after -- how often did you talk to him while he was in Timberlawn?
A. Just that one time.
Q. You just talked to him that once. Did you ever see Gary again after he got out?
A. No, I didn't.

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Q. Did you ever talk to him again?
A. I talked to him on that Monday.
Q. On which Monday?
A. The Monday to the -- prior to the case.
Q. Okay. And what was the circumstance, or how did that conversation come about?
A. He said that --
MR. BEACH: Judge, I'm going to object to what he said.
Q. (BY MR. JOHNSON) Okay.
THE COURT: Sustained.
Q. (BY MR. JOHNSON) Did -- when he was talking to you on that particular occasion, was he -- was there anything about his emotional state or his mental state that y'all discussed?
A. Yeah, he sounded slow, sounded, you know, like he was really tired, said that he was cleaning up.
Q. Now, are you talking about the day of the incident that happened?
A. Yes.
Q. Okay. Let me ask you this question, then. After he got out of Timberlawn, do you recall if you spoke to him again until the time that this incident occurred?
A. No.
Q. Okay. But you talked to him on that particular day?
A. Correct.

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Q. All right. And you said you spoke to him and without going into what he told you at that point in time, you talked to him in the afternoon?
A. Yes.
Q. Okay. And you didn't talk to him again until that night, did you?
A. Correct.
Q. Could you tell the jury how it was that night -- how that night came about -- I mean, you got started with a phone call from your mom?
A. Correct.
Q. I think the jury has heard several times about how y'all got together and went to find him, so I'll skip over those particular details. But I want to ask you this. Can you tell this jury how Gary appeared to you whenever you first came in contact with him that night?
A. Really spaced out.
Q. Did he -- did he seem even different than he normally did when he was always depressed, or did he seem different?
A. Seemed very different.
Q. In what way, Nysasno? If you can describe it for this jury, can you tell them?
A. He -- he felt like -- it felt like someone who have been -- done went through something real bad. And that -- that

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he made a mistake on.
Q. And you ended up taking him to the police station?
A. Correct.
Q. And he told you about him taking all -- did he tell you about him taking all the pills that he took?
A. No, sir.
Q. How -- when did you find out about that?
A. When we got into the police station.
Q. Okay. But you -- how long -- how long were you with Gary that night?
A. Roughly, 30, 45 minutes.
Q. Okay. And after the police took him off, what was the next really -- did you have any other involvement with this case after that?
A. No, sir.
Q. Have you had occasions, Nysasno, to see Gary in the penitentiary -- or while he's been locked -- not in the penitentiary, but here in the county jail --
A. Yes, I have.
Q. -- Since this happened. Have you had occasions to talk with him about what had happened?
A. Yes.
Q. Has he -- has he talked to you about his feelings in regards to what had happened?
A. Yes, he has.

Q. Can you tell the jury what he's told you?
MR. BEACH: Judge, I'm going to object to what his feelings are.
MR. JOHNSON: I'm sorry?
MR. BEACH: His feelings.
THE COURT: Well, okay, I know, I know.
MR. JOHNSON: I'll rephrase the question, Judge, maybe --
THE COURT: All right.
Q. (BY MR. JOHNSON) Nysasno, have you had occasions to talk to Gary and -- and when you've seen Gary, has he been normal, or has he been still in that depressed state that you've talked about him always being in?
A. Still in that depressed state.
Q. Has he told you that he's been hearing -- that he's still hearing voices?
A. Yes, he have.
Q. Can you tell the jury what voice it is that he's telling you he's hearing?
A. Lovetta -- Lovetta voice.
Q. And what's Lovetta telling him?
A. That she forgive him.
Q. How -- what's the context of how he's told you he's heard -- that he's talked to her?
A. As he was sitting on the end of his bunk -- on the

end of his bed, she came to him like she was on the side of him.
Q. Do you know there's a lot of folks in this room that -- that may not have forgiven Gary for what he's done, and you understand this jury has got a -- some very serious decisions to make about Gary? Do you understand that?
A. Yes.
Q. Nysasno, I want to ask you a question. Is Gary Green -- any doubt the brother that you love, is there any doubt whatsoever that he's -- that he's got a very severe mental problem?
A. Yes, he does.
MR. JOHNSON: That's all the questions I have for you right now, Nysasno.
THE COURT: Cross.
CROSS-EXAMINATION
BY MR. BEACH:
Q. Nysasno, I've got to ask you this. What were the names of those two dogs?
A. Excuse me?
Q. The name of those two dogs.
A. What two dogs are you referring on?
Q. That Gary and Mark burned up?
A. Gary and who?
Q. Mark -- Marcus?

A. I don't know.
Q. You don't remember telling that lady out there that when Gary and you were living together, you had two dogs and he and his friend set them on fire?
A. What lady are you speaking to?
Q. The one in the front row there with the dark hair, Kelly? You know Kelly, don't you?
A. Yes, I do.
Q. I mean, it's in her report that you told her that. Were you telling her a lie when you told her that, or did it not happen or what?
A. You said a name that I didn't know.
Q. Okay.
A. Yeah.
Q. Who -- who is the guy?
A. Demarcus.
Q. Demarcus?
A. Yes.
Q. I'm sorry. So going back to my original question, what were the names of the two dogs?
A. Cain and White.
Q. Cain and White?
A. Yes.
Q. Now, we met when you came down to testify with your mom to the grand jury about a year ago; is that right?

A. Correct.
Q. And I'm going to get through this real quick, Nysasno. You came from the same biological parents as Gary Green; is that correct?
A. Correct.
Q. And how old were you -- excuse me, was your biological dad Thomas Carter; is that right?
A. Yes.
Q. Was he still around when you were born?
A. What do you mean?
Q. I mean, was he still in the house -- when your mom brought you home from the hospital, it's your understanding, was your biological father still in a relationship with your mom?
A. No.
Q. So you never had any relationship with Thomas Carter?
A. When I got older.
Q. Okay. But in the -- in your infancy, toddler years, he was not around?
A. No.
Q. Okay. And Gary is three and a half years older than you?
A. Yes.
Q. So is it fair to say that Gary would have been

three, three and a half by the time that your -- your biological father was out of the picture?

A. Yes.

Q. Okay. So he would have only been exposed to Thomas Carter on a full-time basis for about three years?

A. Yes.

Q. You've told us that Leon Sampson is a good man, hard working man, he's your father; is that correct?

A. Correct.

Q. And you looked up to him and he instilled in you a work ethnic and good values, knowing the difference between right and wrong; is that right?

A. Correct.

Q. And Leon Sampson tried to do the same thing with Gary; is that right?

A. Correct.

Q. You told us that growing up Gary didn't have any friends. Was Demarcus a friend of his?

A. No.

Q. Just an acquaintance?

A. Yes.

Q. Okay. Remember a guy named Levi?

A. Yes.

Q. Was that a friend of Gary's?

A. He was a friend of everybody's.

Q. Okay. Gary hang out with Levi?

A. On occasion.

Q. And then after Gary got out of the penitentiary for the robbery, do you recall him having any friends?

A. I don't recall.

Q. Other than girlfriends?

A. I don't recall.

Q. He had a lot of girlfriends, didn't he?

A. Sir?

Q. He had a lot of girlfriends, didn't he?

A. He had a lot of friends.

Q. I can't remember -- were you in here yesterday when any of this testimony was going on?

A. No, I've been sitting in the hall.

Q. So you didn't hear Shirley Coleman testify; is that right?

A. No.

Q. When Gary got out of the penitentiary, he married that older lady Belinda Lacy; is that right?

A. Yes.

Q. And were you there when they got married?

A. No.

Q. Okay. And that marriage lasted about three weeks?

A. Somewhere up in there, yes.

Q. And you and Gary were working together at that time?

A. Yes.

Q. Okay. And Gary was spending a lot of time with you; is that right?

A. Yes.

Q. Both at work and away from work?

A. Mostly at work.

Q. Okay. So we know Gary during that about year and a half time frame was fathering four different children; is that correct?

A. Correct.

Q. Okay. And that's always been a bone of contention between you and Gary; is that right?

A. Been a what?

Q. Bone of contention that he's not taking care of his kids, and you've been telling him he needs to do that; is that right?

A. Yes.

Q. You've been more of a father to Gary's biological kids than Gary ever was; is that --

A. No, I've been an uncle to them.

Q. I'm sorry?

A. I've been an uncle to them.

Q. Uncle to them. But I mean, going to their games -- athletic games, giving them money, buying them things, you were doing that; is that correct?

A. Yes, because my kids were on the same team.

Q. Okay. Was Gary at their games?

A. No.

Q. Was Gary giving them money?

A. No.

Q. You told us that a bunch of your family members have had psychological or psychiatric issues; is that right?

A. Yes.

Q. And y'all don't talk about it?

A. No.

Q. Some of them have actually been hospitalized; is that correct?

A. I don't recall.

Q. You don't know?

A. No.

Q. Okay. And whatever the stigma is -- I mean, Gary was able to get over at it at least that time he went to Timberlawn; is that right?

A. Yes.

Q. He checked himself in?

A. Yes.

Q. You didn't force him to do that; is that right?

A. No.

Q. You told me at the grand jury that your understanding as to why Gary was there, because he was feeling

a lot of pressure; is that correct?
A. Correct.
Q. You were aware that Gary had that job from March to August with the -- with Power Guardian; is that correct?
A. Yes.
Q. Did you ever meet any -- his employer or any of his co-employees?
A. No.
Q. Didn't ever meet Vonn Miller?
A. No.
Q. What was your understanding as to what Gary was doing on a day-to-day basis for Power Guardian?
A. Installing batteries.
Q. Installing batteries?
A. Yes.
Q. We're not talking about flashlight batteries, we're talking big corporation batteries; is that correct?
A. Correct.
Q. I mean, it was -- it was a technical job, wasn't it?
A. Probably so, yes.
Q. Gary was going out of town and being with people, his co-employees and spending nights out of town; is that correct?
A. Correct.
Q. And Gary quit that job, didn't he?

A. I don't recall what happened.
Q. You told us that Gary calls you from Timberlawn and then he gets out. The records show August 24th, whatever they show. You didn't see him between August 24th and the date of the murders; is that correct?
A. Correct.
Q. Talked to him one time on the phone?
A. Correct.
Q. Now, you do recall when you came down and testified in front of the grand jury that I asked you about what Gary told you about what happened that night. Do you recall that?
A. Yes.
Q. Okay. You've see your grand jury testimony in the last couple of weeks; is that right?
A. Correct.
Q. Gary told you that he did, in fact, murder Lovetta; is that correct?
A. Yes.
Q. But he would never admit to you that he killed the little girl; is that right?
A. Correct.
Q. You asked him what happened to the baby; is that right?
A. Correct.
Q. And he just wouldn't talk about it, or said he

didn't do it?
A. He didn't say.
Q. The night you and your mom and your wife and your aunt end up meeting up with Gary over there on Jennie -- Jennie Lee; is that correct?
A. Yes.
Q. He was at a friend's house that night; is that correct?
A. Correct.
Q. That's Mark?
A. Yes.
Q. And Gary had enough of a relationship with Mark that he had -- he had spent the days and nights leading up to this over there; is that right?
A. I don't know. My first time seeing him.
Q. Your first time seeing Mark?
A. Yes.
Q. You knew he was over at his friend's house in those -- in the week leading up to the murder; is that correct?
A. No, I didn't.
Q. Had he ever called you from over there?
A. No, he didn't.
Q. How did you know that Mark was a friend of his? He talked about him?
A. No, he didn't.

MR. BEACH: That's all I have, Judge.

REDIRECT EXAMINATION

BY MR. JOHNSON:

Q. Nysasno, in regards to that -- the way you found out where he was at that night was calling back a number off of caller I.D.; is that right?
A. That my mom got off of caller I.D., yes.
Q. The person that -- the person whose house y'all went to, that's not someone you had ever seen, heard of, or knew at all before this night; is that right?
A. Correct.
Q. And you didn't know if that was just someone Gary was staying with because Lovetta had put him out of the house the week before?
A. Right.
Q. Mr. Beach asked you a question over there a minute ago about the way Gary took care of his life, took care of his personal business, took care of his children. He asked you if that was a bone of contention amongst you and him; is that right?
A. Yes.
Q. Gary didn't -- Gary really didn't do nothing in his life the normal way, did he?
A. No.
Q. And you always knew, didn't you, or did you not

always know that that's because there was something wrong with him?

A. Yes.

Q. He -- he asked you if Gary got over the stigma about -- about being mentally ill or being crazy, whatever word you want to use, long enough to go to Timberlawn Hospital. In fact, when he went and checked himself in, Lovetta was lying to you about where he was at, wasn't she?

A. Correct.

Q. And you wouldn't have known that he was in Timberlawn if he hadn't -- if it hadn't come up on your caller I.D.?

A. Correct.

Q. When you -- you said something to him about, I know where you are, that's when he admitted to you what was going on, didn't he?

A. Yes.

Q. So it wasn't like he was calling you up, saying, well, hey, I'm -- I found a way to get me a crazy check, Nysasno?

A. Right.

Q. He -- he was actually trying to keep it from you that he was in Timberlawn at first, was he not?

A. Correct.

MR. JOHNSON: I don't have anything further for

you, Nysasno. Thank you very much.

RECROSS-EXAMINATION

BY MR. BEACH:

Q. Nysasno, I can't call Lovetta to say whether or not she was lying or not, can I?

A. No.

MR. BEACH: That's all I have.

MR. JOHNSON: Nothing further, Judge.

THE COURT: Thank you, sir. You may step down.

MR. JOHNSON: Your Honor, I have a brief matter that needs to be on the record outside the presence.

THE COURT: All right. Ladies and gentlemen, we need you to please step out.

THE BAILIFF: All rise.

(Jury excused from courtroom.)

THE COURT: All right. Jury is not now present. Y'all can sit down.

MR. JOHNSON: Your Honor, at this time I need to put something on the record from my Defendant who has previously been sworn. But before we do, Judge, could I have just one moment to consult with him?

THE COURT: Yeah.

MR. JOHNSON: Come on, Gary.

(Recess.)

(Defendant and counsel return to courtroom.)

MR. JOHNSON: Your Honor, you want me to go ahead and make a record?

THE COURT: Go ahead, please.

GARY GREEN,

the defendant, was called as a witness in his own behalf, and after having been previously duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. JOHNSON:

Q. Your name is Gary Green?

A. Correct.

Q. Gary, we've just called your brother and he was the last witness that we had intended to call on the issue of punishment. And you understand that at this time, again, that you have an opportunity and the right to make -- to take the witness stand and testify if you choose to do so. I want to make sure that you fully understand that right. And it's just -- basically I'm going to ask you the same things that I asked you before. This jury is about to go back and decide two special issues which will determine the sentence in this case. And you were present for about two months of voir dire, and you understand what the questions are and what the -- what those decisions and those question answers will decide? You understand all that, right?

A. Correct.

Q. Gary, if you wish to testify on the issues of

punishment, if you have anything to say to the jury, you understand you have the absolute right to do so. You have an absolute right not to do so, if that's how you decide to proceed. If you decide that you want to testify, no matter how I've advised you, if it's my advice that you shouldn't, but you wish to do so, that I would put you up there and I would question you in such a way as to bring forth anything that you wish to say to the jury, bring that out in the light that would be most favorable to you. Do you understand that?

A. Correct.

Q. The bottom line is, this is a right that you have and only you have. And for all intents and purposes, unless there's something that may happen that we have no control over and no power or ability to control, the decision that this jury is about to make is going to be the final decision in this case. So when you exercise your right to make a decision this afternoon, it's not going to be a decision that you can come back later and say, well, you know, I should -- I should have done something different because the decision you make today is going to be pretty much binding upon you. And that's why I want to make sure that you recognize that you have that right and you have the ability to exercise it. Is that fair enough?

A. I understand.

Q. After knowing all those things, Gary, and after you've had an opportunity and we've gone back into the holdover

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cell and you've spoken to Kobby and Brady and myself about this and we talked about the status of the case, you've indicated to us in talking to you going through the trial preparation and talking to us about the people that we might have potentially called, you've indicated to us that we have called the people that you wanted to speak on your behalf; is that right?

A. Correct.

Q. And we've called the doctors that we wanted to have come in here and talk and try to offer the jury information they can use in answering these questions; is that right?

A. Correct.

Q. There's not anybody at all that you've asked us to call or to talk to on your behalf that we've refused to do so, is there?

A. No.

Q. In fact, we've been pretty exhaustive in talking to you about anybody that might have any information that would be relevant to these issues. And, in fact, we've talked to a whole lot of folks and interviewed a whole lot of folks that we've interviewed and talked to you about, and we've just all decided that they wouldn't have anything to say. And you're in agreement with those decisions; is that correct?

A. Correct.

Q. Gary, knowing that this will be the end of the case, this will be the end of the evidence on your behalf, are you

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satisfied with our efforts?

A. Extremely satisfied.

Q. And do you have any complaints at all that you want to make about either my representation or the representation of Mr. Wyatt and Mr. Warren?

A. I think you three gentlemen went way beyond the scope of your -- your job or your duties, so I'm overly satisfied.

Q. Okay. What is your decision in regards to taking the witness stand in this portion? Do you wish to exercise your Fifth Amendment rights?

A. Yes.

Q. Okay. And so we're going to request that the Court instruct the jury to disregard or not to consider that for any purpose and that's the way you wish to proceed?

A. Correct.

MR. JOHNSON: Judge, that's all I have.

THE COURT: All right. So it's your intention to rest?

MR. JOHNSON: Yes, sir.

THE COURT: What's the State going to do after that?

MR. BEACH: Offer that one portion, Judge, the highlighted letter.

THE COURT: What says the Defense?

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MR. JOHNSON: How are we going to do it, Judge?

MR. BEACH: I'd like to just read it which will be the easiest, from there to there and here, here.

(Document handed to counsel.)

(Discussion off the record.)

THE COURT: All right. What does the State want to offer in rebuttal?

MR. BEACH: Excerpts of a couple of letters that the Defendant wrote to his girlfriend, specifically: But I know that's all behind us now. Jennifer, when we first became as one, I said if you ever blank, blank, blank over me, think you can play with my feeling, I'll kill you. Isn't that what I said, question mark, question mark, question mark. I see you and nobody else can just --

COURT REPORTER: I'm sorry, I cannot hear you.

MR. BEACH: You see and nobody else can just turn on my feelings and turn them off when you get ready. I'm not make out that can of material.

That's one excerpt.

The second is: I have associated with people on both sides of the laws. I just choose to go the wrong way. With me doing the wrong thing, that placed me here. It wasn't the money mostly. It was the high of done wrong and getting away. I wasn't on drugs or alcohol. Like to think I was completely sane at that time. You see, I know what it takes to

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make and be a success, but this place at this time is the best place for me. Understand what I'm talking about first before you make a judge of my sanity. When I was out, my people will tell you that if I wasn't incarcerated at that time of the summer of 1990, I would have killed up a lot of people or been killed. Really because I was gone, I really was living day to today, not caring about life and people.

Those two excerpts, Your Honor.

THE COURT: What says the Defense?

MR. JOHNSON: Judge, we -- we are going to object to these -- these portions of these letters. We are -- our first objection is going to go to the fact that we had not been tendered any of this material until just three days ago, and we feel we've been surprised by the production of these documents. At this time the State's intending to use them, and we feel we are being unfairly prejudiced by the admission of these letters -- these threats at this time, and due to the fact that we weren't being allowed to use them in any way in any of our consultation with expert witnesses and the analysis by our experts in regards to any of these statements. And we feel like the Court -- or the State should have exercised due diligence in seeking out to determine whether or not there was anything such as these letters in existence which may have been useful or -- or -- in their case.

So bringing them up here on -- while we're in

the punishment phase of a -- of a capital crime, Judge, I think is -- and certainly a case that the Court has discretion to decide whether or not the admission of them at this time would be violative of the Defendant's due process rights and violation of the State, as well as the 8th and 14th Amendments to the United States Constitution. And we're going to object to them on that basis.

THE COURT: I -- I --

MR. JOHNSON: I have another objection, also.

THE COURT: Well, let's just -- one objection at a time. I'm looking at Article 37.07(g). Where is your appellate lawyer?

MR. HEALY: She went to get cases on argument.

THE COURT: Okay. That's nonsensical.

MR. HEALY: I'm just telling you where they went.

(Counsel returns to courtroom.)

THE COURT: Okay. 37.07(g), untimely request of the Defendant --

MS. LAMBERT: 37.07 or 37.071?

THE COURT: 37.07(g).

MS. LAMBERT: Which section?

THE COURT: G.

MS. LAMBERT: It's numbered. 37.07?

THE COURT: Section 3(g).

MS. LAMBERT: Okay. That's due to extraneous offenses.

THE COURT: Yes.

MS. LAMBERT: Did I miss something?

THE COURT: And bad acts.

MS. LAMBERT: Okay.

MR. BEACH: He objects that we were going to -- did not exercise due diligence in giving them to them, so we never gave them notice until --

MS. BENNETT: We're in rebuttal.

MR. BEACH: -- when he first found out about it.

MS. LAMBERT: We already talked about this.

THE COURT: No, listen.

MS. LAMBERT: I'm listening. I'm sorry, I missed the -- I missed the beginning.

THE COURT: It has to do with punishment. This is punishment, okay?

MS. LAMBERT: Okay. So the letters were given to him last Monday?

THE COURT: Monday.

MS. LAMBERT: And we've been talking about them for four days? That would be considered reasonable notice.

THE COURT: When was notice given?

MR. JOHNSON: There was never notice given, Judge, or they -- we were never given notice before trial. We

were given notice during the punishment phase.

MS. LAMBERT: You were given notice as soon as we received the letters.

MR. JOHNSON: I'm sorry?

THE COURT: I understand that.

MR. BEACH: Last Friday -- last -- didn't you tell them last Friday? Jennifer called Paul last Friday when she found out about the letters.

MR. JOHNSON: We were told last Friday that there were some letters, but we weren't told -- we obviously didn't see the contents of the letters until --

MR. BEACH: Monday.

MR. JOHNSON: -- until during the punishment phase.

THE COURT: So Monday is when you actually saw them?

MR. BEACH: Saw them.

MR. JOHNSON: Yes.

MS. BENNETT: The same day the State saw them, we -- yes.

THE COURT: I understand that, but --

MS. LAMBERT: Okay, Judge, the case law says that they're not required to receive notice of rebuttal evidence.

THE COURT: It's not rebuttal evidence. It's

punishment evidence.

MS. LAMBERT: We're rebutting the --

MR. JOHNSON: What are you rebutting? We haven't offered any future danger testimony.

THE COURT: It's punishment evidence. Just -- I'm reading the section -- the code section that this is under is under punishment.

MS. LAMBERT: So the objection is that you didn't receive adequate notice, or what's your objection?

MR. JOHNSON: Number one, we didn't receive adequate notice, and, number two, we haven't offered any future dangerous testimony. How can you say you're offering rebuttal testimony, when we haven't offered any?

(Discussion off the record between counsel.)

THE COURT: Okay. And just -- just for the record, too, just so we know exactly where we are, I want to point out Section 37.071, Section 2, the introduction of evidence of extraneous conduct is governed by the notice requirements of Section 3(g), Article 37.07. Just so we know that -- where -- where we are. And this is -- this is specifically talking about being found -- after being found guilty, so the punishment stage. Doesn't say anything about rebuttal. It just says the punishment stage.

So here's my question. If notice of something has not been given until after the punishment stage is begun --

MS. LAMBERT: Well, we got -- you had -- Friday is when we gave it to them?

MR. JOHNSON: We were given it Monday.

MR. BEACH: Before the punishment started.

MS. LAMBERT: Right. And you were notified on Friday --

MR. JOHNSON: We were notified of the existence of the letters --

MS. LAMBERT: -- of the existence of the letters, and then you were given the letters on Monday when we actually received them, correct?

MR. JOHNSON: Correct.

THE COURT: Follow me.

MS. LAMBERT: I'm with you, Judge.

THE COURT: Okay. Trial starts. Verdict of guilt is returned. After the verdict of guilt is returned, but before evidence is presented in the punishment phase, notice is given to the Defense of evidence that they wish to bring up during the punishment phase.

We're all in agreement that 404(b) talks about case in chief, but the question is the punishment phase. It doesn't talk about rebuttal in the State's case or even the State's portion. It just says evidence of bad acts shall be -- the Defense shall be given notice prior to its introduction. That's 37.07(g) as referenced by 37.071, Section 2.

MS. SMITH: Okay. So what's your argument about why it's unreasonable?

MR. JOHNSON: It's not timely.

MS. SMITH: Well, it's timely in the sense that we gave it over as soon as we had it, so how does it --

MR. LAMBERT: And you have to show surprise, which obviously you're not surprised because we've been talking about it for four days.

MR. JOHNSON: I was -- I was surprised.

MS. SMITH: Well, how are you prejudiced? You've had time to find a way to respond to them. You've had plenty of time to come up with this argument, try to exclude it. Show me how you're prejudiced. Just so it might come in doesn't mean you're prejudiced, too, by the way.

MR. JOHNSON: Well, Judge, there's such a remoteness to the language. It has no probative value as to the special issues.

MS. LAMBERT: Oh, so now it's 403?

MR. JOHNSON: Well, it's 403, it's 404.

THE COURT: No, we're not going to argue 403 right now. I'm more concerned about this.

MS. LAMBERT: The notice?

THE COURT: Yes.

MS. SMITH: Okay. Well, it doesn't give a number, doesn't tell us -- it just says timely, right, or

reasonable?

MS. LAMBERT: Reasonable. And case law doesn't put a number on what reasonable is. And considering the fact that he was told as soon as we knew and the fact that we've been talking about it for four days and he's still -- has never raised this argument until right now, I don't see how he can complain that he wasn't reasonably notified.

MR. JOHNSON: Well, Judge, as I just -- as I stated a moment ago in regards to my due process argument, the fact --

MS. LAMBERT: So now it's due process?

MR. JOHNSON: That's what I objected to a moment ago.

MS. LAMBERT: Okay.

MR. JOHNSON: And the -- we're claiming that -- that it's -- it's unfair at this time to allow the admission of this evidence because as I said a moment ago, we were not allowed to have this information prior to trial and prior to the formulation of our defensive strategy and prior to the formulation in the consultations with our expert witnesses and had we, in fact, had this information, then we may have changed our whole strategy in how to try the case.

MS. LAMBERT: Your expert witnesses reviewed the letters today.

MR. JOHNSON: Our expert witnesses had

formulated their opinions prior to coming to the courtroom.

MS. LAMBERT: And changed them when they were here, so they could have taken this information and used it to form the basis of their expert opinion.

MR. JOHNSON: But we don't have an opportunity to change the formulation of our strategy to proceed with the whole trial.

MS. LAMBERT: You could have done so on Friday or on Monday.

MR. JOHNSON: That's a little bit --

THE COURT: Don't -- don't say Friday. It was Monday. For the record, it's Monday.

MS. SMITH: But punishment still hadn't started.

MR. JOHNSON: Well, I'm talking about --

THE COURT: I understand that, but I don't want the record to be confused as to what my opinion of when they received notice.

MS. LAMBERT: I got it.

THE COURT: So I don't want to -- don't -- I just want it to be clear that the Court believes it was -- it was Monday morning prior to punishment beginning, but it was still Monday, not Friday.

MR. JOHNSON: So that's the nature of our -- that's the nature of our objections, Judge. We feel -- and it's strictly within the discretion of the Court. And this is

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a capital crime. And certainly -- the Court can certainly err -- err on the side of caution in order to protect the constitutional rights of the Defendant.

THE COURT: All right. The Court makes the following finding -- the Court finds -- the Court finds that the State did not discover the -- the letters until the Friday prior to the beginning of -- of punishment. The Court finds that the State at that time gave notice to the Defense of their intent to introduce these records as bad acts and included within that the name of -- of all of the parties and all identifying information and turned over these letters to the Defense on Monday prior to the beginning of -- of punishment.

The Court finds that introduction of them now at this time satisfies the timely notice requirement to which the Defense has excepted. The exception is noted.

Now, next argument. Content. Content objections?

MR. JOHNSON: Judge, we're just going to object to the content of the letters is -- the -- of the information contained in the letters is at least 20 years ago. It's -- it's too remote, has no bearing on the issue as to the future dangerousness issue of the Defendant or in regards to mitigation as he sits in this courtroom today.

THE COURT: What says the State?

MS. SMITH: I'm sorry, I did not hear what you

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just said, Paul. We were busy.

MR. BEACH: Let me try to handle this.

MS. SMITH: Okay.

MR. BEACH: I don't know how many times we've heard in the last day and half that the Defendant has been mentally ill his entire life. Well, his entire life includes when he was in the penitentiary writing letters to his ex-high school girlfriend about, you know, how he made choices and he was sane and it wasn't for the money, it was for the thrill of getting away from it. So that -- that's -- that goes to his antisocial personality versus his mental illness, and they've opened all that up for our ability to rebut it with these letters.

THE COURT: And which -- and what -- what do you want to introduce?

MR. BEACH: Those two excerpts that I read, Judge, into the record.

THE COURT: And how do you -- how do you propose -- how do you all -- okay, I'm going to rule that those are admissible over Defense's objection which is timely made.

Now, how are we going to get it in?

MR. BEACH: I would suggest to read it.

THE COURT: You're not waiving anything by -- you're not waiving anything by coming to an agreement on how it's delivered.

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MR. JOHNSON: No, I understand. And, Judge, the only problem -- the only problem with reading it again is I don't have an objection to Mr. Beach reading it if there's absolutely no inflection and if he reads it in the same manner in which it's written, because there were -- several words were misspelled. They need to be read phonetically and not what his assumption of the wording -- or the letters are supposed to be.

MR. BEACH: I can do that.

MR. JOHNSON: And with absolutely no inflection, and so I don't have a problem with him doing it in that regard. And we -- absolutely, it's imperative that since this is going to be read to the jury, it would be considered an exhibit that -- that they bring a -- in some fashion they have these things bracketed on a separate exhibit so that the jury is not allowed to even inadvertently see the remaining portions of those letters.

THE COURT: Is that -- does the State agree to that stipulation?

MR. BEACH: Yes, sir.

THE COURT: All right. Then that's -- that's how we will proceed.

MR. JOHNSON: And just out of an abundance of caution, Judge, at this time all of these letters -- and I know Ms. LaBar is very good at what she does. There's -- there's been several exhibits in the trial so far that have been

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admitted for record purposes only, and we just want to reurge the Court and the reporter to exercise extreme caution and make sure that the jury is not given any access to any of the exhibits that have been introduced for record purposes only.

THE COURT: All the hand -- the handwritten letters to the girlfriend of which the State gave notice of on -- on Monday, those are admitted for record purposes. Now, the other letters, it's my understanding, were admitted for all purposes.

MR. BEACH: That's correct.

MR. JOHNSON: That's correct.

THE COURT: And we've had a conversation.

MR. JOHNSON: They were -- they were included in the business record affidavits.

THE COURT: Okay. Right. Then we're -- we're -- in agreement.

MS. LAMBERT: Judge, did -- did you get -- regarding closing argument?

THE COURT: Did I get what? Yeah, I looked. I know that. I know that section. That's not 37.071. Go get the jury.

MS. BENNETT: Yeah, we'll do it after. You found a case on point.

Lisa did.

(Discussion off the record.)

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THE BAILIFF: All rise.
(Jury returned to courtroom.)
THE COURT: Thank you all. Please be seated.
Defense.
MR. JOHNSON: Your Honor, ladies and gentlemen, Defense is going to rest.
THE COURT: State?
MR. BEACH: The State at this time would offer into evidence two excerpts from a letter written by the Defendant to Jennifer Alcorn while he was in the penitentiary, those being State's Exhibits 148A, that's already been published to the jury about the college, and now State's 148B.
(State's Exhibits 148A and 148B offered.)
THE COURT: Please proceed.
MR. JOHNSON: Your Honor, if the Court would note our previous objection.
THE COURT: Previous objection is noted.
MR. BEACH: And are they admitted?
THE COURT: They're admitted.
(State's Exhibits 148A and 148B admitted.)
MR. BEACH: That I know that's all behind us now. Jennifer, when we first came as one, I said if you ever blank, blank, blank, blank over, and think you can play with my feeling, I'll kill you. Isn't that what I said, question mark, question mark, question mark. You see, you and nobody else can

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just turn on my feelings and turn them off when you get ready. I'm not make out of that can of material.
I have associated with people on both sides of the laws. I just choose to go the wrong way. Me doing the wrong thing that placed me here, it wasn't the money mostly, it was the high of done wrong and getting away with it. I wasn't on drugs or alcohol. Like to think I was completely sane at that time. You see I know what it takes to make and be a success, but this place at this time is the best place for me. Understand what I'm talking about first before you make a judge of my sanity. When I was out, my people will tell you if I wasn't incarcerated at the time of the summer of 1990, I would have killed up a lot of people or been killed. Really because I was gone, I really was living for day-to-day, not caring about life and people.
The State rests.
(State Rests.)
THE COURT: Defense rest?
MR. JOHNSON: Close.
(Defense Closes.)
THE COURT: Close?
MR. BEACH: Close.
(State Closes.)
THE COURT: Ladies and gentlemen, you've heard all the evidence you're going to hear in this case. We are

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going to reconvene tomorrow morning at 10:00 a.m., at which time you will hear arguments from counsel. The -- I don't know what that's going to be yet, but you will find out then. Do not start making up your mind until you've been given what's called the charge of the Court. Just like in the first stage of this case, you will get jury instructions on how to proceed and what you are to look at and how to proceed. You cannot make your decision as to what you think should happen until then. You can't discuss it amongst yourselves until you have been so told to do so by the Courts. So until tomorrow morning, we will read the charge at 10:00 a.m., each side will have a chance to -- to make an argument, and then we will let you make up your mind then.
Lunch will be provided to you tomorrow. It will be delivered here. You'll get a chance to order it and things like that. So until tomorrow morning, 10 o'clock. Jury --
MR. JOHNSON: Judge, we need to approach about a matter. Could we have the jury remain in the jury room until the bailiff excuses them?
THE COURT: In the jury room, yes, you may.
(Jury excused from courtroom.)
(Discussion off the record.)
THE COURT: Bring them in. Bring them in.
(Jury returned to courtroom.)
THE COURT: Thank you all. Please be seated.

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Ladies and gentlemen, one other -- one other thing, and this is -- this is important. Again, this is book stuff. That -- I'm going to ask that you all pack a bag tonight, okay? Going to have to be couple days worth -- worth of clothes, just -- just to make sure. Because once we start the deliberation process, you all are going to be stuck. And that's a good thing. It really is. I know you're not -- you don't like it, but it's -- it's part of the process. It's part of how things work, just to make sure that the decision is not tainted, make sure the decision is not rushed, that you simply race at the end of the day and go, oh, boy, it's 4:15, we better make a decision. You can't do that in this case.
You all know how important this is, so pack a bag tomorrow. Don't know if it's going to be needed or not, but make sure to pack a bag. I know one person has -- has airport duty. Try to make other arrangements, if that can be done ahead of time rather than at the last minute. Like I said, just in an abundance of caution, I don't want you to rush through your decisions. I want them to be made according to the rules so that we don't have to do this again. But one of the things is that you will be required to stay together.
Yes, sir?
JUROR: Should we bring our things in the morning or leave them --
THE COURT: You can always bring them in. We've

got a safe location -- a lot safer in here in my office than they are in your car, so I would say go ahead and bring -- and bring them in. And if you get stopped by security and they say you're not allowed to bring something in, you -- we will -- we'll come downstairs and make sure that it gets brought in. You tell them just talk -- talk to Judge Chatham, and he told me to bring this, okay? So we'll make sure that that gets -- gets brought in.

So, ladies and gentlemen, until tomorrow.

(Jury excused from courtroom.)

(Recess of proceedings.)

Reporter's Certificate

THE STATE OF TEXAS:

COUNTY OF DALLAS:

I, Darline King LaBar, Deputy Official Court Reporter in and for the 282nd District Court of Dallas County, State of Texas, do hereby certify that the above and foregoing volume constitutes a true, complete and correct transcription of all portions of evidence and other proceedings requested in writing by counsel for the parties to be included in the Reporter's Record, in the above-styled and numbered cause, all of which occurred in open court or in chambers and were reported by me.

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